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The State of Utah, School and Institutional Trust Lands Administration v. Rex Morrell Mathis, Joann L. Mathis-Ross, William Dale Mathis, Mark Pickup, Shawnda Pickup Cave, Mathis Land, Inc., a Utah Corporation, Buck Creek LLC, a Utah LImited Liability Company, Mountain Mineral Resources, LLC, a Utah Limited Liability Company, John Does 1-10 : Brief of Appellant

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IN THE SUPREME COURT STATE OF UTAH

STATE OF UTAH, acting by and through the SCHOOL & INSTITUTIONAL TRUST LANDS ADMINISTRATION, Plaintiff/Appellant, vs. REX MORRELL MATHIS; JOANN L. MATHIS-ROSS; WILLIAM DALE MATHIS; MARK PICKUP; SHAWNDA PICKUP CAVE; MATHIS LAND, INC., a Utah Corporation; BUCK CREEK, LLC, a Utah Limited Liability Company; MOUNTAIN MINERAL RESOURCES, LLC, a Utah Limited Liability Company; JOHN DOES 1-10, Defendants/Appellees.	Case No. 20070910 – SC

APPELLANT'S BRIEF

Appeal from the Seventh Judicial District
Court of Carbon County, State of Utah
The Honorable Douglas B. Thomas

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JURISDICTION

The Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. §78A-3-102(j) (2008).

STATEMENT OF THE ISSUES/PRESERVATION

A. Do provisions of the Utah Enabling Act and Utah Constitution pertaining to state school trust lands preclude the application of statutes of limitations when the State acting as trustee seeks to recover possession of state school trust lands wrongfully diverted from the corpus of the trust? R. at 560-63.

1. Standard of Review:

When reviewing a district court's grant of summary judgment, the facts and all reasonable inferences drawn from them are viewed in a light most favorable to the non-prevailing party, here the State. *Wayment v. Clear Channel Broadcasting Inc.*, 116 P.3d 271 (Utah 2005). "The district court's legal decisions are granted no deference on summary judgment and the court reviews them for correctness." *Fericks v. Lucy Ann Soffe Trust*, 100 P.3d 1200 (Utah 2004).

B. Is this case substantively distinguishable from the holding of the Utah Supreme Court in *Van Wagoner v. Whitmore*, 199 P. 670 (Utah 1921), involving the identical statute of limitations? R. at 560-63; 762-65.

1. Standard of Review:

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271 (Utah 2005). "The district court's legal decisions are granted no deference on summary judgment and the court reviews them for correctness." *Fericks v. Lucy Ann Soffe Trust*, 100 P.3d 1200 (Utah 2004).

C. Did the District Court err in entering Summary Judgment for Defendants/Appellees on the basis that they held under "color of title" by virtue of the 1912 patent (which had undisputedly been adjudicated void in 1926) and the subsequent tax sale by Carbon County, without first considering the invalidity of the1912 patent and the disputed tax sale? R. at 549-54; 1136.

1. Standard of Review:

When reviewing a district court's grant of summary judgment, the facts and all reasonable inferences drawn from them are viewed in a light most favorable to the non-prevailing party, here the State. *Wayment v. Clear Channel Broadcasting Inc.*, 116 P.3d 271 (Utah 2005). "The district court's legal decisions are granted no deference on summary judgment and the court reviews them for correctness." *Fericks v. Lucy Ann Soffe Trust*, 100 P.3d 1200 (Utah 2004).

CONSTITUTIONAL PROVISIONS AND STATUTES

I. Utah Constitution

a. Article X, section 5 of the Utah Constitution, provides in pertinent part:

> (1) There is established a permanent State School Fund which shall consist of revenue from the following sources:
> (a) proceeds from the sales of all lands granted by the United States to this state for the support of the public elementary and secondary schools;
> (b) . . .
> (c) . . .

(d) all revenues derived from the use of school trust lands;
(e) . . .

(2) . . .

(d) The State School Fund shall be guaranteed by the state against loss or diversion.

(3) There is established a Uniform School Fund which shall consist of revenue from the following sources:

(a) interest and dividends from the State School Fund; . . .

(4) The Uniform School Fund shall be maintained and used for the support of the state's public education system as defined in Article X, Section 2 of this constitution and apportioned as the Legislature shall provide.

As enacted at statehood, article X, section 5 read:

> The proceeds of the sale of lands reserved by an Act of Congress, approved February 21st, 1855, for the establishment of the University of Utah, and of all the lands granted by an Act of Congress, approved July 16th, 1894, shall constitute permanent funds, to be safely invested and held by the State; and the income thereof shall be used exclusively for the support and maintenance of the different institutions and colleges, respectively, in accordance with the requirements and conditions of said Acts of Congress.

b. Article XX, section 2:

> Lands granted to the State under Sections 6, 8, and 12 of the Utah Enabling Act, and other lands which may be added to those lands pursuant to those sections through purchase, exchange, or other means, are declared to be school and institutional trust lands, held in trust by the State for the respective beneficiaries and purposes stated in the Enabling Act grants.

As enacted at statehood, article XX read:

> All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.

II. Federal Statutes

a. Section 6 of the Utah Enabling Act, Act of July 16, 1894, 28 Stat. 107, provides in pertinent part:

> That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed State . . . are hereby granted to said State for the support of common schools.

b. Section 10 of the Utah Enabling Act, Act of July 16, 1894, 28 Stat. 107, provides in pertinent part:

> That the proceeds of lands herein granted for educational purposes . . . shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only.

c. Act of January 25, 1927, Chapter 57, §1, 44 Stat. 1026 (the "Jones Act"), codified as amended at 43 USC § 870 (1956), provides in relevant part:

Subject to the provisions of subsections (a), (b), and (c) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

(a) The grant of numbered mineral sections under this section shall be of the same effect as prior grants for the numbered nonmineral sections, and titles to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered nonmineral sections.

(b) The additional grant made by this section is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall hereafter be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands not heretofore disposed of by the State shall be subject to lease by the State as the State legislature may direct, the proceeds and rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools:

Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

III. Utah Statutes

a. Utah Code Ann. § 78-12-2 provides in pertinent part:

> The state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the state to the same, unless:
> (1) such right or title shall have accrued within seven years before any action or other proceeding for the same shall be commenced . . .
> (2) . . .

STATEMENT OF THE CASE

This is an action to quiet title to a 640-acre section of state school trust land in Carbon County (the "Subject Land"). The State also seeks an accounting of proceeds received by the Defendants from their partial disposition of the mineral estate of the Subject Land. The Defendants/Appellees are individuals and limited liability companies (collectively described herein as the "Mathises").

In 1912, the State conveyed the Subject Land to a private corporation, the Carbon County Land Company ("CCLC") for nominal consideration. Subsequent investigation in the nineteen-teens and -twenties determined that CCLC had obtained this and other valuable coal lands from the state school trust by fraud. The United States subsequently successfully sued the State to invalidate the State's title to the Subject Land on the basis that the lands were of known mineral character at the time of statehood, and thus not

subject to transfer. With title to the land having never left the United States, the State of Utah's sale to CCLC was void *ab initio*.

By subsequent federal legislation known as the Jones Act, the United States conveyed title to the Subject Land to the State of Utah, effective January 25, 1927. In 1932, Carbon County purported to sell CCLC's interest in the land for back taxes, and the Mathises' predecessor acquired that interest from the County by quitclaim deed in 1938. The State learned in 2002 that the Mathises were leasing the lands to a third party for coal extraction and subsequently filed this action.

The substantive question presented to the District Court was whether the State of Utah's after-acquired title in the mineral estate of the Subject Land flowed to CCLC – the State's patentee under the void 1912 patent – when the State first acquired the land from the United States in 1927. The State contends that as a matter of law the void 1912 state patent – by law no more than a quitclaim deed – could not support after-acquired title/estoppel by deed, and that the Mathises did not have the required privity in any event to assert estoppel, given the root of their claims in a tax sale. Without after-acquired title, the tax sale upon which the Mathises' claim to title is based was unquestionably void, since title to the Subject Land had always been in either the United States or the State, and the property was thus exempt from taxation.

The parties did not dispute relevant facts concerning the original sale of the Subject Property, the United States' invalidation of the State's title, the Jones Act, and the subsequent Carbon County tax sale. On cross-motions for summary judgment, the District Court declined to rule on the after-acquired title issue, except necessarily by

implication (as discussed herein), or the State's claims that the tax sale, which is the foundation of the Mathises' claims to title, was void because the land was at all times exempt from assessment. Instead, it held that the statute of limitations contained in Utah Code Ann. § 78-12-2 (2007) barred the State from maintaining this action. The District Court's Final Order and Judgment was entered on November 27, 2007, and this appeal followed.

The State contends that the statute of limitations contained in section 78-12-2 may not constitutionally be applied to bar the State from recovering land wrongly diverted from the corpus of the state school trust. This argument is based on the decision of the Utah Supreme Court in *Van Wagoner v. Whitmore*, 199 P.2d 670 (Utah 1921), which held that the identical statute of limitations was inapplicable to bar an action by the State with respect to school trust lands because such an application of the statute would violate the Utah Constitution. The District Court distinguished *Van Wagoner* based on its legal conclusion that the Supreme Court's constitutional analysis in *Van Wagoner* was limited to the facts of that case, which rested upon a claim of adverse possession. In doing so, the District Court relied on the admittedly void 1912 patent and the subsequent tax sale; the District Court's opinion stated: "Here the State made a conveyance of the property issued by patent and the Mathises acted under color of title based on that patent and the tax sale that flowed there from for more than 70 years." R. at 1136; Final Order attached hereto at Addendum A.

The State seeks reversal of the District Court's Order and Final Judgment because Utah Code Ann. § 78-12-2 is not applicable to this action by the State in its capacity as

trustee of the trust created by article X, section 5 and article XX, section 2 of the Utah Constitution. The State respectfully requests that the case be remanded to the District Court with direction to enter judgment quieting title to the Subject Land in the State.

STATEMENT OF FACTS

Statehood Grants of School Trust Lands

Utah achieved statehood in 1896 pursuant to the Utah Enabling Act. Utah Enabling Act, Act of July 16, 1894, 28 Stat. 107, Preamble. In the Utah Enabling Act, Congress granted Utah numbered sections 2, 16, 32 and 36 in every surveyed township in the State for the support of the new state's public schools. *Id.* at § 6. Proceeds from these school trust lands constitute a permanent school fund, income from which provides funding for Utah's K-12 public schools. *Id.* at § 10; Utah Const., article X, § 5 (2003); Utah Code Ann. § 53A-16-101.5(5)(a) (2003). The Utah Constitution declares all lands granted under Section 6 of the Utah Enabling Act for the support of public education to be held in trust for the purposes for which granted. Utah Const. art. XX, § 2. The Utah Enabling Act and Constitution impose a trust upon the State of Utah with respect to the disposition of proceeds from the school trust lands as well as the use of the lands themselves. *National Parks and Conservation Association v. Board of State Lands*, 869 P.2d 909 (Utah 1993). The Utah legislature has codified the State's trust responsibilities with respect to school trust lands in the School and Institutional Trust Lands Management Act. Utah Code Ann. §§ 53C-1-101 *et seq.* (2008) (the "Trust Lands Management Act").

The Subject Land

The Subject Land is a 640-acre parcel of land in Carbon County, Utah, described as follows:

Township 12 South Range 10 East, SLB&M
Section 36: All

Appellees Rex Morrell Mathis, Joanne L. Mathis-Ross, William Dale Mathis, Mark Pickup, Shawnda Pickup Cave, Mathis Land, Inc., a Utah Corporation, Buck Creek, LLC, a Utah Limited Liability Company, Mountain Mineral Resources, LLC, a Utah Limited Liability Company and John Does 1-10 (collectively the "Mathises") all claim title to the Subject Land. The Mathises' claim to title in the Subject Land originates solely from a quitclaim deed from Carbon County to Rex Mathis dated May 3, 1938. Deed at R. at 131; s*ee also* Def.'s Op. Mem, xi; R. at 602-603.

The 1905 Sale of the Subject Land

Because the Subject Land was Section 36 of a surveyed township, the State originally treated the Subject Land as school trust land granted in place by Congress at the time of statehood pursuant to Section 6 of the Utah Enabling Act. On or about February 1, 1905, Clarence B. Milner ("Milner") executed an agreement to purchase the Subject Land and certain other lands from the State of Utah pursuant to State of Utah Certificate of Sale No. 8500 (the "Certificate of Sale"), which he later assigned to the Carbon County Land Company ("CCLC"). R. at 19; 599. Pursuant to the Certificate of Sale, Milner agreed to pay the State the then-standard price of $1.50 per acre for the Subject Land, as non-mineral grazing lands. R. at 19; 798 (noting, "The price paid by the

Milners . . . was $1.50 per acre, the value placed upon grazing lands"). On February 28, 1912, the State of Utah conveyed, without warranty or reservation of any kind, the Subject Land to CCLC. R. at 21. A federal court later ruled that CCLC and its agents engaged in "a scheme or conspiracy. . . to fraudulently obtain the ownership" of state trust lands containing coal resources. *Milner v. United States*, 228 F. 431, 439 (8th Cir. 1915). In a challenge to the 1915 *Milner* decision, the Milners filed a later action *sub nom Independent Coal & Coke Co. v. U.S.*, 274 U.S. 640 (1927), in which the U.S. Supreme Court concluded that "none of the defendants [CCLC and Milners] . . . could by any legal device, however ingenious, acquire title from the state free from the taint of their fraud." 274 U.S. at 646-47. A 1920 special investigation (the "Mainor & Conniff Audit") conducted on behalf of then-Governor Simon Bamberger determined that the Subject Land was one of several properties containing valuable coal resources that had been obtained from the state school trust by means of fraud perpetrated by CCLC. R. at 871. A second audit (the "Olson Audit") concluded that the CCLC's fraudulent acquisition of approximately 5500 acres of land at $1.50 per acre amounted to an "ostensibly a sale of cheap grazing lands" by taking advantage of "at least great carelessness on the part of the State Land Board in disposing of these lands [referring to 83,887 acres of school trust lands fraudulently acquired by 'dummy' entrymen and assigned to coal companies]". R. at 798, 792.

The 1912 Patent Declared Void *Ab Initio*

As enacted, the Utah Enabling Act's school section grant did not contain an express exception or reservation of mineral lands from the grant. However, the United

States Supreme Court subsequently held in *United States v. Sweet*, 245 U.S. 563 (1918), that the Utah Enabling Act did not in fact pass title to the State to lands that were known to be mineral in character at the time of statehood. In the aftermath of the *Sweet* decision and the *Milner* court's finding of persistent land fraud, the United States Department of the Interior ("DOI"), on June 27, 1924, through the United States General Land Office (the "United States GLO") directed the Utah General Land Office Register (the "Utah GLO"), a local administrative arm of the federal agency, to initiate contest proceedings against the State and its transferees with respect to the Subject Land on the basis that it was in fact of known mineral character at statehood. R. at 23-27. After hearings before the Utah GLO in which the State of Utah and CCLC participated, the DOI on September 4, 1926 recommended to the Secretary of the Interior that the claims made by the State and its transferee, CCLC, be denied because the Subject Land had been of known mineral character at the time of statehood. R. at 40. On September 8, 1926, the Secretary of the Interior issued a Final Order adopting the DOI's recommendation, adjudicating the Subject Land to be of known mineral character at the time of Utah statehood. The Secretary therefore found that the State's title to the Subject Land was void *ab initio*, having remained at all times with the United States rather than vesting with the State. R. at 461-62. This order adjudicating the State and CCLC's title to be void *ab initio* was never appealed and became final. R. at 461. CCLC did not pay property taxes on the Subject Land subsequent to the Secretary of Interior's Order. *See* 1932 Tax Deed, R. at 127.

The Jones Act

In January of 1927, Congress made a conditional grant to the public land states of additional lands. The new grant consisted of in place school sections that were known to be mineral in character at the time of statehood, and which had thus not passed under the original statehood grants. Act of January 25, 1927, Ch. 57 §1, 44 Stat. 1026, codified as amended in 43 USC § 870-871 (the "Jones Act"). The Jones Act conveyed as an additional conditional grant both the surface and mineral estate of the Subject Land to the State of Utah, conditioned upon the perpetual retention of the mineral estate by the State. Department of the Interior, Instructions (Circular No. 1114) March 15, 1927. R. at 464; *see Jensen v. Dinehart*, 645 P.2d 32 (Utah 1982). On July 1, 1929, the United States GLO transmitted a letter to the Utah GLO Register confirming that title to the Subject Land had not passed under the Act of July 16, 1894 (the statehood grant) but had passed to the State under the Act of January 25, 1927 (the Jones Act). R. at 117-20. In 1964 the United States issued United States patent No. 43-65-0072 confirming that ownership of the Subject Land passed from the United States to the State of Utah pursuant to the Jones Act as of January 25, 1927. R. at 121-22. This patent was recorded in the real property records of Carbon County on November 2, 1964 in Book 92, Page 206.

The After-Acquired Title Inquiry

By letter dated July 17, 1929, to the DOI, the Executive Secretary of the Utah State Land Board inquired what the effect Utah's after-acquired title statute, Section 4879 of the Compiled Laws of Utah, 1917, had on subsection (b) of the Jones Act. R. at 660-62. On January 15, 1930, Mr. John F. Edwards, Assistant Secretary of the Interior,

responded to the State Land Board's letter on behalf of the DOI to J.F. Mendenhall, Executive Secretary, State Land Board (the "Edwards Letter"). R. at 773-77. The Edwards Letter stated:

> [W]here title did in fact pass from the State by virtue of its prior patent, which would *only be in instances where the lands involved passed to the State under its original grant*, the act of January 25, 1927, does not affect such lands and sales and conveyances of the same. This would be true under long settled rules of the Department as to lands in fact mineral in character, which had been sold and patented as lands passing under the original grant, if the lands were *not known to be mineral* at the time they were identified by survey, or at the time when the State was admitted to the Union, if the survey preceded the admission.

Edwards Letter at 2; R. at 774 (emphasis added). It continued: "As to lands, however, that in fact were known to be mineral in character at the date the State's rights would have otherwise attached, and which by reason of such knowledge did not pass under the original grant, the lands pass to the State only by virtue of the act of January 25, 1927, and the purchasers thereof *obtained nothing by their purchases prior to the act*." *Id.* (emphasis added). The Department further stated that the Jones Act "makes no exception from the operation of its provisions lands theretofore sold, conveyed or patented by the State, and certainly *there is no room for the construction that it validated the unauthorized prior sale of known mineral lands*" and that the State "by legislation or otherwise has not power to alienate its title to mineral deposits or consider its previous conveyances of such minerals as alienations." Edwards Letter at 3; R. at 775 (emphasis added).

The Mathises' Claim of Title

Prior to January 25, 1927 (the date of the Jones Act), title to the Subject Land was vested in the United States. Following the Jones Act, title to the Subject Land was vested in the State. Neither the United States nor the State was subject to property taxation pursuant to then-applicable provisions of the Utah Constitution. *See* Utah Const. art. III (enacted 1895).

On December 21, 1927, the Carbon County Treasurer issued a Certificate of Sale making a preliminary sale of the Subject Land to Carbon County for unpaid taxes for the year 1927. *See* 1932 Auditor's Tax Deed; R. at 307. In May of 1932, the Carbon County Treasurer issued an auditor's tax deed (the "Tax Deed") to Carbon County, thereby purporting to make a sale of the Subject Land to the County for unpaid property taxes assessed in 1927. R. at 306. In 1938, Carbon County quit claimed its interest in the Subject Land to Mr. Rex Mathis. This quitclaim deed (the "1938 Quitclaim Deed") was recorded in the Official Records of Carbon County, Utah on May 3, 1938 in Book 3S, Page 616. R. at 478. The Mathises in this case are the successors in interest to Mr. Mathis, who died intestate on July 12, 1972.

Subsequent Events

Since the date of the Jones Act, the State has made no conveyance of any interest in any part of the Subject Land save a mineral lease issued to Andalex Resources, Inc. ("Andalex") on March 1, 2004. R. at 480-98. Effective as of January 1, 1998, the Mathises entered into a lease for the mining of coal underlying the Subject Land to Andalex Resources, Inc. (the "Mathis-Andalex Lease"). R. at 500-524. The Mathises

did not occupy the mineral estate until they entered into the Andalex Lease. Pursuant to the Mathis-Andalex Lease, Andalex has made payments to the Mathises constituting lease rental payments, lease bonus payments and advance minimum royalties that constitute proceeds from the Subject Land. R. at 500-524. The State became aware of the Andalex Lease in late 2002, and filed this action in April 2005 after conducting due diligence concerning its potential claim to the Subject Land.

SUMMARY OF ARGUMENTS

I. *Statutes of Limitations May Not Be Applied to Prevent Recovery of School Trust Lands for the Corpus of the School Trust.*

The Utah Enabling Act of 1894, 28 Stat. 107, together with Article X, section 5 and article XX, section 2 of the Utah Constitution, created an express trust governing the management of lands granted by Congress to Utah at statehood for the support of public education. This trust imposes a "sacred obligation" on the State of Utah to devote the school trust lands to the purposes for which they were granted by Congress. The Utah Supreme Court in *Van Wagoner v. Whitmore*, 199 P. 670 (Utah 1921), analyzed the constitutional scope and nature of this trust and concluded as a matter of law that ordinary statutes of limitation – specifically including the exact limitations provision at issue in this case – do not apply to bar actions by the state as to trust lands because the Utah Constitution imposes an "absolute limitation upon the power of the state to dispose of such lands, or permit them to be disposed of, except for the purposes for which they were granted by Congress." 199 P. at 675, 679. Courts in other states that have

considered this issue have similarly held that the legislature may not statutorily abrogate the trust or unlawfully divert its assets.

The Court has reaffirmed this principle time and again since *Van Wagoner*, most recently in *Consolidation Coal Co v. Utah Division of State Lands*, 886 P.2d 514 (Utah 1994). There, the Court held that the school trust imposed an absolute limitation on the State's ability to alter or abrogate its duty to receive "full value" for trust lands, or to make any disposition of property that conflicts with this duty. In that case, the Court held that "serious questions" would arise about the constitutionality of a state statute – in that case the statutory contract interest rate – if it were applied to reduce the returns otherwise available to the school trust. In the current case, the statute of limitations applied by the District Court would wholly divest the school trust of a valuable asset. Under the Utah constitution, as interpreted by *Van Wagoner* and *Consolidation Coal*, this is not a permissible result.

II. *The District Court Wrongly Distinguished Van Wagoner from the Current Case.*

The District Court distinguished *Van Wagoner* on the basis that it involved application of limitations to a situation of adverse possession, while it found that the Mathises had "color of title" by virtue of the void 1912 patent and the subsequent tax sale. This was error for two reasons. First, under Utah law at the time of *Van Wagoner*, the adverse claimant (Whitmore) had color of title by statute, so there was no basis for the District Court's distinction. Second, review of the case law pertaining to applicability of limitations to the school trust shows no analytical basis for limiting those cases' effect

to adverse possession cases; where the issue has been considered, the courts have stated that the principle extends to all situations where the trust corpus would otherwise be depleted. There was simply no basis in law for the District Court's legal distinctions. The Utah Constitution's prohibition of uncompensated loss to the school trust is as equally applicable to this case as it was in the *Van Wagoner* case, in particular since the identical statutory limitation language is at issue.

The District Court also relied upon the Utah Court of Appeals' interpretation of legislative intent in *Trail Mountain Coal Company v. Division of State Lands & Forestry*, 884 P. 2d 1265 (Utah App. 1994), to apply the statute of limitations in this case. That opinion applied statutory analysis to find that the statute of limitations could be applied to school trust lands where the legislature has broadly included the state in the statutory limitation. However, none of the cases cited by the Court of Appeals as a basis for applying the statute to school trust lands actually involved school trust lands – a crucial distinction in light of the constitutional issues associated with school trust lands. The Court of Appeals opinion did not address or analyze the constitutional limits on the legislature's power over school trust lands, but rather relied on a surface application of the statute.

When *Trail Mountain* was reviewed by the Supreme Court on certiorari, the State failed to raise the constitutional issues in its initial brief. The Supreme Court therefore declined to address the constitutional issue on the merits. *Trail Mountain Coal Company v. Division of State Lands & Forestry*, 921 P.2d 1365, 1371, n.11 (Utah 1996). This decision did not in any way disturb *Van Wagoner*, which remains controlling precedent

here. The District Court's reliance on the Court of Appeals opinion in *Trail Mountain* was therefore error.

III. *The District Court's Reliance on Color of Title and Grant of Summary Judgment Implicitly Assumes the Validity of the 1912 Patent and 1932 Tax Sale.*

Although the District Court specifically declined to rule on the validity of the Mathises' claim of title arising from the 1912 State Patent and the 1932 Tax Sale from Carbon County, the Court's conclusion that the Mathises had color of title was premised upon on the validity of these conveyances to pass title as against the State. This underlying premise was flawed as a matter of law. The Department of the Interior issued a final, binding decision in 1926 that the United States owned the Subject Land. The state, and its prior patentees, owned nothing. This decision was conclusive as to all future title actions arising from those parties' interests under the statehood grant. The State of Utah subsequently obtained an entirely new title under the Jones Act of 1927, subject to the terms of that act.

The United States undisputedly held title to the Subject Land prior to the Jones Act. The State held undisputed legal title thereafter. The assessment of taxes on the Subject Land by the county in 1927 could be of no legal effect as to the interests of either the federal government or the State of Utah under applicable law exempting federal and state land from assessment. Therefore, the sale of the Subject Land by the county for taxes assessed while held by either sovereign was void and of no effect as to any interest of the state. The District Court's reliance on "color of title" for its legal conclusion that the statute of limitations apply in this case is erroneous. The adversely holding party in

Van Wagoner also held under color of title. Utah Compiled Laws § 5034 (1917); now codified at Utah Code Ann. § 57-6-4(2)(a). Thus, the 1938 Quit Claim Deed from the county to the Mathises passed no interest superior to that of the State.

ARGUMENT

I.

SECTION 78-12-2 MAY NOT BE APPLIED TO THE STATE ACTING IN ITS CAPACITY AS TRUSTEE OF SCHOOL TRUST LANDS

A. *Introduction*

The core issue before the Court is whether the 7-year statute of limitations found at Utah Code Ann. § 78-12-2[1] prevents the State, in its capacity as trustee, from suing to recover school trust lands wrongly diverted from the corpus of the school trust. In *Van Wagoner v. Whitmore*, 199 P. 670 (Utah 1921), the Supreme Court held that the statute of limitations pled in that case (the language of which is identical to section 78-12-2) could not be applied to the State when acting as trustee of school trust lands. In this case, the District Court made the legal conclusion that the holding in *Van Wagoner* did not apply and ruled that the State's action was time-barred by section 78-12-2. Final Order attached hereto at Addendum A. The District Court's ruling fails to apply the

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[1] This statute has recently been renumbered as Utah Code Ann. § 78B-2-201 with amendments not relevant to this case. H.B. 78, § 639, 57th Leg., Gen. Sess. (Utah 2008).

constitutional analysis contained in *Van Wagoner* and other applicable school trust cases, and erroneously distinguishes controlling precedent.

When reviewing a district court's grant of summary judgment, the facts and all reasonable inferences drawn from them are viewed in a light most favorable to the non-prevailing party, here the State. *Wayment v. Clear Channel Broadcasting Inc.*, 116 P.3d 271 (Utah 2005). "The district court's legal decisions are granted no deference on summary judgment and the court reviews them for correctness." *Fericks v. Lucy Ann Soffe Trust*, 100 P.3d 1200 (Utah 2004).

B. *Utah's School Trust*

When Utah and other western states entered the Union, Congress recognized that the vast areas of untaxable federal public lands in the new states created a serious impediment to the new states' abilities to support public education through an adequate property tax base. *State of Utah v. Kleppe*, 586 F. 2d 756, 758 (10th Cir. 1978), *rev'd on other grounds sub nom. Utah v. Andrus,* 446 U.S. 500 (1980). To rectify this burden, Congress enacted the federal land grant statutes to create a permanent trust which would generate financial aid to support the public school systems of the new states. *Id.* In return for the land grants, the states covenanted to hold the lands under trust covenants for the perpetual benefit of the public school systems. *Id.*

Utah achieved statehood in 1896 pursuant to the Utah Enabling Act. Utah Enabling Act, Act of July 16, 1894, 28 Stat. 107. In the Utah Enabling Act, Congress granted Utah numbered sections 2, 16, 32 and 36 in every surveyed township in the State for the support of the new state's public schools. *Id.* at § 6. Proceeds from these school

trust lands constitute a permanent school fund, income from which provides funding for Utah's public schools. *Id.* at § 10; Utah Const., Art. X, § 5 (2003); Utah Code Ann. § 53A-16-101.5(5)(a) (2003). The Utah Constitution declares all lands granted under Section 6 of the Utah Enabling Act for the support of public education to be held in trust for the purposes for which granted. Utah Const. Art. XX, § 2.

The Supreme Court has consistently held that the Enabling Act grant, coupled with the State's acceptance of the terms of the grant through the Utah Constitution, created an express trust binding the State in its use of the lands and funds generated from the lands. In *Duchesne County v. State Tax Commission*, 140 P. 2d 335 (Utah 1943), the Supreme Court stated:

> [T]he trusteeship of the fund was vested in the state by the Enabling Act as a condition of statehood, as a condition to the right of the state to be born, and imposed on the state at its birth by the instrument of its creation as a condition of its life as a government.

140 P. 2d at 342.

The Court in *Duchesne County* held that the land grant was an express constitutional trust, requiring the State to act as a trustee and guarantor against loss. 140 P. 2d at 337. In *National Parks and Conservation Association v. Board of State Lands*, 869 P. 2d 909 (1993), the Supreme Court extensively defined the scope and nature of the school trust. It concluded that as a trustee, the State was required to act as a fiduciary for the benefit of the public education system. 869 P. 2d at 917. The State's fiduciary duties included the duty to act only for the benefit of the beneficiaries; the value of school trust lands cannot be used to further other legitimate government objectives. *Id.* This duty of

loyalty includes an obligation on the State to not act in the interest of a third party at the expense of the trust beneficiaries. *Plateau Mining Company v. Division of State Lands & Forestry,* 802 P.2d 720, 728 (Utah 1990).

C. *The Utah Constitution Limits the Legislature's Power to Dispose of Trust Lands, Including Disposal by Application of Statutes of Limitations.*

The trust created by the school land grant and the Utah Constitution creates an irrevocable duty on the part of the State to receive "full value" from any disposition of its school trust lands. *Consolidation Coal Company v. Utah Division of State Lands & Forestry,* 886 P.2d 514 (1994). The trust thus limits the power of the Utah legislature to dispose of trust lands for other than full value, including indirectly by limitations. In *Van Wagoner v. Whitmore*, *supra*, the Supreme Court engaged in constitutional analysis considering the application of a statute of limitations substantively identical to the statute at issue here:

Section 6446 (Held Inapplicable in *Van Wagoner*):	Utah Code Ann. § 78-12-2:
The state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title . . . to the same, unless:	The state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title to the same, unless:
1. Such right or title shall have accrued within seven years before any action or other proceeding for the same shall be commenced; or,	(1) Such right or title shall have accrued within seven years before any action or other proceeding for the same shall be commenced; or
2. The state or those from whom it claims shall have received the rents and profits such real property, or some part thereof, within seven years.	(2) The state or those from whom it claims shall have received the rents and profits such real property, or some part thereof, within seven years.

In *Van Wagoner*, the State and its patentee (Van Wagoner) sought to eject a third party (Whitmore) from school land that Whitmore had adversely occupied and cultivated for decades. Whitmore interposed the statute of limitations set forth above. The Supreme Court held that, notwithstanding statutory language expressly barring the State from bringing an action where it had not been in possession within seven years, the statute could not be applied with respect to school trust lands:

> This [the constitutional provisions with respect to school lands] ... is an absolute limitation upon the power of the state to dispose of the lands, or permit them to be disposed of .... Is it conceivable, in the face of such a constitutional provision, that the Legislature could have intended its statutes of limitation to apply to such lands? It is our solemn duty to hold that such could not have been the legislative intent. When ... we add the further provision that the state of Utah guarantees the proceeds of these lands against loss or diversion, thus making itself an insurer and in honor bound to make good any loss that the schools might sustain by diverting these lands, or permitting them to be diverted, to other purposes, the conclusion becomes irresistible that the statutes of limitation have no application to the land in question.

199 P. 675, *citing Murtaugh v. Chicago, Milwaukee & St. Paul Ry. Co*, 112 N.W. 860 (Minn. 1907).

Courts in other states with school trust lands have similarly concluded that otherwise applicable statutes of limitation may not be applied to bar recovery by the school trust. In both *State v. Peterson,* 97 P. 2d 603 (Idaho 1939) and *United States v. Fenton*, 27 F.Supp. 816, 817 (D. Idaho 1939), courts in Idaho ruled that a statute of limitations could not be applied to prevent the State of Idaho from foreclosing mortgages securing a loan of trust funds. In *Peterson*, the Idaho Supreme Court looked to provisions of the Idaho constitution holding that state's permanent school fund to be

forever inviolate to preclude application of the statute of limitations to a state-initiated foreclosure. The U.S. District Court contemporaneously held in a similar case that the Idaho legislature could not constitutionally enact any statute directly decreasing the permanent school fund, and therefore could not enact a statute of limitations that brought about the same result:

> The fund is sacred and stands out with that special protection, and any statute of limitations, **whether it relates to the State or not**, would not apply to actions brought by the trustee State for the foreclosure of a mortgage to secure a loan out of such funds.

27 F. Supp. at 816 (emphasis added). *See also Murtaugh*, 112 N.W. 860 (Minn. 1907).

More recently, the Utah Supreme Court has confirmed the constitutional limitations placed on the Utah legislature by the school trust in a case directly analogous to the one now before the Court. In *Consolidation Coal Company v. Utah Division of State Lands & Forestry*, *supra,* 886 P.2d at 514, a coal company had substantially underpaid royalties to the Division of State Lands and Forestry, which then managed the State's school trust lands. The coal lease was silent concerning pre-judgment interest. Utah law at that time provided that if the contract did not specify a rate of interest, the 6% statutory pre-judgment rate of interest would apply. *See* Utah Code Ann. § 15-1-1(2). The Division argued that a much higher interest rate set by Division rules should apply. 886 P. 2d at 525. It pointed to the fact that, had the royalties been paid on time, the funds would have been invested in a trust account at a higher rate of interest, and that charging the 6% statutory rate would result in a loss of value to the trust.

The Supreme Court agreed. It noted that the State has an irrevocable duty to receive "full value" from any disposition of school trust lands, citing cases where courts had invalidated legislative action reducing returns to school trusts. *Id., citing Kadish v. Arizona State Land Dep't*, 747 P.2d 1183, 1196 (Ariz. 1987) (statute fixing flat royalty rate on trust lands unconstitutional); *Oklahoma Education Ass'n v. Nigh*, 642 P.2d 230, 236-7 (Okla. 1982) (statute establishing maximum rent on trust lands unconstitutional). In light of these principles, the Supreme Court expressed serious questions about the constitutionality of applying section 15-1-1 to the school trust:

> Given that the Utah Enabling Act and state and federal constitutions "unequivocally demand" that the trust fund be paid the full value of any minerals transferred from it, we have serious doubts that the application of 15-1-1 in this case would withstand constitutional scrutiny.

886 P. 2d at 527.

The Supreme Court noted its fundamental rule that it would seek to construe statutes to avoid running afoul of constitutional prohibitions. *Id., citing State v. Wood,* 648 P.2d 71, 82 (Utah 1982); *State v. Bell*, 785 P. 2d 390, 397 (Utah 1989). It ruled that the Division and its governing Board had statutory authority to enact rules imposing interest on unpaid obligations, and determined to harmonize those rules with the constitutional provisions governing school trust lands. *Id.*

D. *The District Court Erred in Failing to Consider Constitutional Limits on the Applicability of the Statute of Limitations in the Case Before It.*

The District Court committed error by not analyzing the constitutional protections afforded the school trust and assessing whether the challenged statute abrogates the state's duty as trustee. R. at 1136; Final Order attached hereto at Addendum A. This

analysis is required by *Van Wagoner*, 199 P. 670, which holds that the Utah Constitution is an "absolute limitation" against which a challenged statute must be measured. 199 P. at 675-76. *See also Consolidation Coal Company, supra,* 886 P. 2d at 525; *Montanans for Responsible Use of the School Trust v. State,* 989 P. 2d 800, 803 (Mont. 1999) (constitutional provisions with respect to school trust lands are limitations on the power of the legislature to dispose of lands); *State v. Tanner*, 102 N.W. 235 (Neb. 1905)(it is not within the legislature's power to allow uncompensated transfer of trust assets).

Application of the statute of limitations here would preclude the State, in its capacity as trustee, from recovering a valuable asset wrongly divested from the school trust through the void tax sale conducted by Carbon County in 1932. It is not relevant that the mechanism for this deprivation is indirect, through limitations, rather than a direct legislative gift of trust assets. It is equally impermissible in the trust context to "allow that to be done by indirection which could not be done directly." *Peterson*, 97 P.2d at 607 (quoting *Northern Pacific Railway Co. v. Townsend*, 190 U.S. 267 (1903)). As in *Consolidation Coal*, application of a statute of general application – in that case the prejudgment interest statute, here limitations – to the school trust would create a serious constitutional issue. 886 P.2d at 527. The Supreme Court in *Consolidation Coal* stated that the Court's construction of statutes, if possible, should avoid the risk of running afoul of constitutional prohibitions. *Id.* Allowing the State to proceed with this action would eliminate the risk, indeed the certainty, of such a constitutional problem here. In light of the constitutional obligations of the State with respect to school trust lands, section 78-

12-2 must be construed as inapplicable to actions to recover such lands for the corpus of the trust. The *Van Wagoner* court addressed this issue directly:

> We do not contend that the state of Utah has not consented to a bar against the state in some matters, but we do contend that the lands involved in this controversy, being school lands, are not within the class of property as to which the state has consented to be barred, or consented to any title being acquired by adverse possession. At first blush, section 6646 et seq. might seem to justify an assumption that the state is barred as to all real property, but we contend that the nature and purpose of the school grant from the United States, the wording and spirit of the acceptance of the grant in the state constitution, the legislative provisions to carry out and utilize the grant for the purpose for which it was granted, the necessary incidents of this trust, and the beneficent result of a faithful performance of the trust, are such that to permit a construction of said sections 6446 et seq., taking away the substance of the grant, despoiling the school fund, would be an utter violation of the terms of the trust imposed by the donor and of the solemn conditions specified in the acceptance of the grant.

199 P. at 672. The Supreme Court subsequently concluded: "Is it conceivable, in the face of such a constitutional provision, that the Legislature could have intended its statutes of limitation to apply to such lands?" *Id.* at 675. Its answer was, of course, no.

In holding that section 78-12-2 applies to the state in this case, the District Court failed entirely to address the constitutional issues raised by the State. Its failure to consider constraints on the application of statutes of limitations to deprive the school trust of lands was erroneous.

II.

THE DISTRICT COURT WRONGLY DISTINGUISHED THIS CASE FROM *VAN WAGONER*

A. *The District Court Ruling.*

The District Court determined that *Van Wagoner* was distinguishable from the case before it. The Court stated that, unlike the adverse possession situation in *Van Wagoner*, here the State had "made a conveyance of the property at issue by patent and the defendants acted under color of title based on that patent and the tax sale that flowed there from, for more than 70 years." R. 1136; Final Order attached hereto at Addendum A. The District Court relied on *Trail Mountain v. Utah Div. of State Lands & Forestry*, 921 P.2d 1365 (Utah 1996), in which the Utah Supreme Court affirmed a decision of the Utah Court of Appeals applying section 78-12-2 to a claim asserted by the State for collection of coal royalties. The Court of Appeals' decision held as a matter of statutory interpretation that states are generally exempt from statutes of limitation in their capacity of school land trustees except where the legislature makes the statute applicable to the state. R. 1126, *citing Trail Mountain Coal Company v. Utah Div. of State Lands & Forestry*, 884 P. 2d 1265, 1271 (Utah App. 1994). This holding was based on only the Court of Appeals statutory interpretation, and did not analyze the constitutional issue.

B. *The Court of Appeals Opinion in Trail Mountain Is Based On an Erroneous Interpretation of Case Law.*

In *Trail Mountain*, the State was seeking to recover underpayment of coal royalties from school trust lands under lease. The District Court, relying on *Van*

Wagoner, held that no statute of limitations constrained the State's efforts to collect royalties from past years. The Court of Appeals disagreed. Although it noted the general exemption from limitations for states acting in their capacity as school land trustee – and cited *Van Wagoner* – it held that where the legislature had specified that the limitations period was applicable to the state, it could be applied to the Division's efforts. 884 P. 2d at 1271. The Court of Appeals held that the statute on its face applied to the State, and concluded it was applicable in the case before it. The Court of Appeals' holding relied on three cases: *California State Lands Comm'n v. United States*, 512 F. Supp. 36 (N.D. Cal. 1981); *Laramie County Sch. Dist. v. Muir,* 808 P. 2d 797, 800-01 (Wyo. 1991); and *State ex rel Cartwright v. Tidmore*, 674 P. 2d 14 (Okla. 1983).

Each of the cases relied upon by the Court of Appeals in *Trail Mountain* do stand for the general proposition that the state may subject itself to the statute of limitations, notwithstanding the common law rule that time would not run against the sovereign. However, none of the cases address or analyze the constitutional limits on the legislature's ability to subject the State's school trust lands to a statute of limitations. None of the three cases involves school trust lands or the constitutional issues associated with those lands. The *California State Lands* case involved tidelands, which pass incidentally to states at statehood rather than through the "solemn compact" associated with school trust lands, and for which entirely different rules of law apply. *See National Parks and Conservation Association v. Board of State Lands, supra,* 869 P. 2d at 919. *Laramie County* and *Cartwright* did not involve lands at all; the former was a construction defect case brought by a school district, while the latter was a state

procurement case. The Court of Appeals did not analyze the distinction between claims involving trust lands – where the legislature's power is constitutionally constrained – and general government claims involving non-trust lands or other issues where no such constraints exist. As discussed in Part I above, state constitutional provisions place substantive limits on the legislature's ability to act with respect to school trust lands. The Court of Appeals opinion did not address these limits at all, relying instead solely on the statutory language. *Cf. United States v. Fenton, supra,* 27 F. Supp. at 816 ("The fund is sacred and stands out with that special protection, and any statute of limitations, *whether it relates to the State or not*, would not apply") (emphasis added). Having failed to address the critical constitutional issue at all, the Court of Appeals opinion is not on point and of questionable precedential value to the issue in this case.

C. *The Supreme Court in Trail Mountain Did Not Address the Constitutional Issue*

On certiorari from the Court of Appeals in *Trail Mountain*, the State of Utah failed to raise the constitutional issue of applicability of statutes of limitation to the State in its trustee capacity until its reply brief. The Supreme Court affirmed the Court of Appeals on the basis of the State's waiver of this issue, without addressing the merits. *Trail Mountain Coal Company v. Div. of State Lands & Forestry,* 921 P. 2d 1365, 1371, n.11 (Utah 1996).

Even if the Court of Appeals' holding in *Trail Mountain* was relevant to this case, this Court's constitutional analysis in *Van Wagoner* is the controlling precedent. *Consolidation Coal Co.*, 886 P.2d 514, n.4 ("This Court follows its *own precedents* . . . and is not bound by decisions of the court of appeals") (emphasis in original); *Renn v.*

Utah State Board of Pardons, 904 P. 2d 677, 681 (Utah 1995). This Court's affirmation of the Court of Appeals in *Trail Mountain* did not question, distinguish or overrule *Van Wagoner*. The Supreme Court has continued to cite the case in support of school trust principles in others of the line of coal royalty cases that include *Trail Mountain*. *See Plateau Mining Co., supra,* 802 P. 2d at 729. *Van Wagoner* remains the controlling precedent for this case.

D. *Neither the Nature of the Case Nor "Color of Title" Distinguishes the Current Case from Van Wagoner.*

The District Court distinguished *Van Wagoner* on the basis that: "The cases cited in *Van Wagoner* are all adverse possession cases." R. at 1130, pp. 7, 36-37; Hearing Transcript attached hereto at Addendum B; R. at 1136; Final Order attached hereto at Addendum A. The District Court also held that the defendants had "color of title" by virtue of the void 1912 patent and subsequent tax sale, thereby holding that this case was distinguishable from a case of adverse possession. The District Court's legal conclusion and holding was therefore in error, because there is no legal relevance to either adverse possession or color of title in the Supreme Court's constitutional analysis and holding in *Van Wagoner*.

The *Peterson* and *Fenton* decisions from Idaho discussed above illustrate that the constitutional analysis of statutes of limitation in *Van Wagoner* applies with equal force to fact patterns aside from adverse possession. Both the Idaho decisions addressed whether a statute of limitations otherwise applicable to the state applies when the state trust attempts to collect on mortgage liens. The *Peterson* court, in holding the statute of

limitations inapplicable to Idaho's school trust lands, found the reasoning in *Murtaugh*, an adverse possession case, applied with equal force in the mortgage lien context:

> The underlying reasons of the above holdings, i.e. the existence of the trust relationship and the necessity for the preservation intact of the public school funds makes such theories just as cogent, applicable and forceful in holding the statute of limitations does not apply to a foreclosure action as to bar adverse possession.

97 P.2d at 607.

The District Court also distinguished *Van Wagoner* because it concluded that the defendant in that case had "really no colorable right to the property, other than simply coming onto the property, fencing it off, raising crops . . . *There is no color of title*." R. at 1130, p. 7 (emphasis added); Hearing Transcript attached hereto at Addendum B. The District Court's determination that color of title was legally relevant to its holding was erroneous. At the time of the *Van Wagoner* decision, Utah law provided that anyone who had occupied a tract of land for five or more years was deemed to have color of title. Utah Compiled Laws § 5034 (1917). This provision has remained unchanged since; it is now codified at Utah Code Ann. § 57-6-4(2)(a). Occupation need not amount to adverse possession to qualify as color of title. *See id.* The defendant in *Van Wagoner* had occupied the subject lands for many decades, and so by definition *did* possess color of title. Color of title does not provide a basis for distinguishing the Mathises' occupancy, which is based upon the void 1912 patent, followed by an equally void tax sale, from the adverse possessor in *Van Wagoner*.

III.

The District Court's Application of Section 78-12-2 Presumes the Validity of the 1912 Patent and 1932 Tax Sale.

In order to find the statute of limitations applicable, the District Court assumed the validity of the Mathises' title, determining that they held "under color of title." R at 1130 and R 1136. The District Court's reliance upon the presence of colorable title in this case to distinguish it from *Van Wagoner* and to quiet title in the Mathises necessarily assumes the validity of the 1912 State patent and the validity of the 1927 Carbon County tax assessment to support the 1938 Quit Claim deed from the County to the Mathises. Both the patent and the tax sale, as a matter of law, are void, and the Mathises gained no title from either. *See Huntington City v. C.W. Peterson*, 518 P.2d 1246 (Utah 1974). The Mathises' claim to the disputed property stems from a 1938 Quit Claim Deed, which in turn is based on Carbon County's 1932 tax sale of a parcel of property assessed for taxes in 1927.

By final action taken by the Department of Interior, the State's 1912 patent was adjudicated void *ab initio* by the Secretary of the Interior on September 8, 1926. The 1926 invalidation of the 1912 patent is *res judicata* and remains binding. The U.S. Court of Appeals for the Tenth Circuit held in *State v. Bradley Estates, Inc.*, 223 F.2d 129, 131 (10th Cir. 1955) that as a matter of federal law the prior departmental adjudication of the mineral character of lands at and prior to the date of official survey is, in the absence of fraud in the imposition, conclusive in future title actions. *See also Cameron v. United States*, 252 U.S. 450 (1920). The final 1926 adjudication voided the entire 1912

conveyance because title had never left the federal government and the state had no title to pass.

The 1927 Jones Act, Act of Jan. 25, 1927, ch. 57 § 1, 44 Stat. 1026, codified as amended at 43 U.S.C. §§ 870-871, was an additional and separate grant to the state of known mineral lands. *See Jensen v. Dinehart*, 645 P.2d 32 (Utah 1982). Thus, in 1927, after the Jones Act, the Subject Land was vested in the State as school trust lands, and the parcel was thus within the "constitutional exemption from taxation as property of the state." *Duchesne County*, 140 P.2d at 343 (school trust land is "property of the state" exempt from taxation); *Stowell v. State*, 115 P.2d 916 (Utah 1941) (tax deed granted by county was without effect as to any interest which constituted school trust property when the taxable entity's title failed). If the tax on land for which a tax sale was made is invalid, "then the sale is void, and the defendant got no title by her tax deed." *Huntington City*, 518 P.2d at 1249.

The Mathises argued below that the doctrine of after-acquired title, codified at Utah Code Ann. § 57-1-10 (2007), applies to the 1912 patent so that the title the state received in 1927 immediately passed through to the Carbon County Land Company, the state's original 1912 patentees. In order for after-acquired title to apply, the conveyance document must contain warranties. *Barlow Society v. Commercial Sec. Bank*, 723 P.2d 398, 400 (Utah 1986) (analyzing Utah statute outlining form of quitclaim deed); *Dowse v. Kammerman*, 246 P.2d 881, 882-83 (Utah 1952) (stating proposition that doctrine of after-acquired title does not apply to quitclaim deeds is "universally recognized"); *Duncan v. Hemmelwright*, 186 P.2d 965 (Utah 1947). State patents, as a matter of

"hornbook law," are quitclaim deeds in nature and contain no warranties. *Energy Transports Systems v. Union Pacific Ry.*, 435 F. Supp. 313 (D. Wyo. 1977); *Beard v. Federy*, 70 U.S. (3. Wall.) 478, 491, (1866); *Los Angeles Farming & Milling Co. v. City of Los Angeles*, 217 U.S. 217 (1910) (patent's operation is that of a quitclaim, or, rather, a conveyance of such interest as the government may possess); *Ellingstad v. Alaska*, 979 P.2d 1000, 1006 (Alaska 1999); *Huntington v. Donovan,* 192 P. 543, 547 (Cal. 1920) (After-acquired title doctrine "does not apply to a government patent").

Additionally, after-acquired title requires privity between the original grantees, here CLCC, and those asserting after-acquired title, here the Mathises. *Kennedy Oil v. Lance Oil & Gas Co.*, 126 P.3d 875, 884 (Wyo. 2006); *Cox v. Gutman*, 575 S.W.2d 661 (Tex. App. Ct. 1978). It may not be invoked by a stranger to the original conveyance who is claiming through an independent title. *General Auto Service Station v. Maniatis*, 765 N.E. 2d 1176, 1184 n. 4 (Ill. App. 2002). This principle follows from the general rule that a party claiming the benefit of an estoppel must show he was induced to change his position because of representations in the deed. *Dominex, Inc. v. Key*, 456 So. 2d 1047, 1057 (Al. 1984). This Court has similarly held that reasonable reliance is a necessary element of establishing estoppel by deed. *Arnold Industries, Inc. v. Love*, 2002 UT 133 ¶ 19, 63 P.3d 721. A tax sale breaks privity. *Bradham v. United States*, 168 F.2d 905, 907 (10th Cir. 1948) (*citing Hussman v. Durham*, 165 U.S. 144 (1897)). In *Hussman*, the U.S. Supreme Court considered whether those claiming title through a void tax sale can assert any estoppel against previous record owners, and concluded such a claim cannot stand because the tax sale functions to break privity between the two lines

of ownership. 165 U.S. at 149-50. Thus, the Mathises cannot claim after-acquired title, even if the doctrine were to apply to a state patent. The *Hussman* Court noted that "it is familiar law that a purchaser of a tax title takes all the chances." *Id.* at 150. Because the 1912 patent was voided *ab initio* in an adjudication that is binding on this state's courts, and because the 1932 tax sale could not pass the State's title, because after-acquired title does not apply and because the Mathises lack privity to assert the doctrine, the Mathises' claim of title against the State fails. The County had no title or interest in the Subject Land to devise.

Although the District Court purported to not reach the validity of either the 1912 State patent or the 1932 tax sale, its determination to apply section 78-12-2 and grant summary judgment quieting title in the Mathises is implicitly based on the validity of both of these conveyance documents. Because the 1912 patent and the 1932 tax sale for 1927 taxes, were void, the Mathises do not have any claim, colorable or otherwise, to a title superior to the State's.

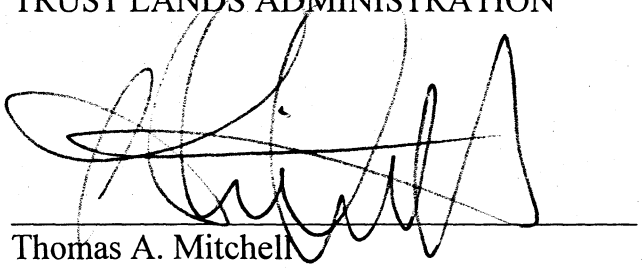
CONCLUSION

Title to the Subject Land vested in the State of Utah on January 25, 1927, and has not been conveyed since that time. The State is entitled to bring this action to recover possession of the Subject Land because state statutes of limitation may not constitutionally be applied to prevent the State, as trustee, from suing to recover land wrongfully diverted from the corpus of the trust created by the Utah Enabling Act and the Utah Constitution. The District Court wrongly applied limitations to preclude the State from maintaining this action to recover the school trust lands at issue here.

The District Court's holding should be reversed, its order vacated, and this action remanded with instructions to enter summary judgment quieting title in the State.

RESPECTFULLY SUBMITTED THIS 14 day of April, 2008.

UTAH SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION



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CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of April, 2008, I sent two true and correct copies of the foregoing Appellant's Brief via first class mail, postage prepaid to:

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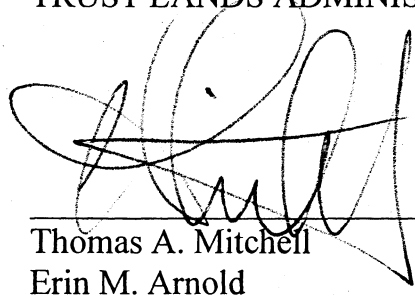

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IN THE SEVENTH JUDICIAL DISTRICT COURT FOR CARBON COUNTY

STATE OF UTAH

STATE OF UTAH, acting by and through the SCHOOL & INSTITUTIONAL TRUST LANDS ADMINISTRATION, Plaintiff, vs. REX MORRELL MATHIS; JOANN L. MATHIS-ROSS; WILLIAM DALE MATHIS; MARK PICKUP; SHAWNDA PICKUP CAVE; MATHIS LAND, INC., a Utah corporation; BUCK CREEK, LLC, a Utah limited liability company; MOUNTAIN MINERAL RESOURCES, LLC, a Utah limited liability company; and JOHN DOES 1-10, Defendants.	ORDER AND FINAL JUDGMENT Civil No. 050700196PR Judge Douglas B. Thomas

This matter came before the court on August 30, 2007. at 9:00 a.m., for oral argument on cross motions for summary judgment. Thomas A. Mitchell and Erin M. Arnold appeared for the

plaintiff. Ronald G. Russell and Royce B. Covington appeared for defendants. The court having reviewed the record herein and considered the arguments presented by counsel, concludes that the plaintiff's claims are barred by the applicable statute of limitations, Utah Code Ann. § 78-12-2, which provides a seven-year limitation period for the state in respect to any real property by reason of the right or title of the state to the same. The court is of the opinion that the Utah Supreme Court's decision in Van Wagoner v. Whitmore, 199 P. 670 (Utah 1921), in which the court held the seven-year limitations period is inapplicable to the state in an adverse possession case, is distinguishable from the instant case. Here, the state made a conveyance of the property at issue by patent and the defendants acted under color of title based on that patent and the tax sale that flowed therefrom, for more than 70 years. In Trail Mountain Coal Co. v. Utah Div. of State Lands and Forestry, 921 P.2d 1365 (Utah 1996), the Utah Supreme Court determined that the seven-year period of Utah Code Ann. § 78-12-2 applied to a claim by the state, and affirmed the Utah Court of Appeals' ruling that although "states are generally exempt from the applicable statute of limitations when acting in their capacity as school land trustees, . . . an exception to the general rule is triggered when the state itself, through its legislature, makes the statute of limitation applicable to the state." Trail Mountain Coal Co. v. Utah Div. of State Lands and Forestry, 884 P.2d 1265, 1271 (Utah App. 1994). The court having based its ruling on the statute of limitations does not reach the issue of the validity of the patent or the tax sale. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Plaintiff's motion for summary judgment is denied.

2. Defendants' motion for summary judgment is granted.

3. The court hereby grants judgment in favor of defendants on their counterclaim and hereby quiets title against the plaintiff to the surface of the following-described real property (the "Property") in Mathis Land, Inc. and to the mineral estate of said Property in Buck Creek, LLC, as to a one-fourth interest, and Mountain Mineral Resources, LLC, as to a three-fourths interest, said Property being located in Carbon County, Utah and more particularly described as:

> All of Section 36, Township 12 South, Range 10 East, Salt Lake Base and Meridian.

4. The defendants are entitled to retain all payments and compensation previously received in connection with the Property.

5. The court further decrees that the defendants are entitled to all proceeds, royalties, and other payments with respect to the Property according to their interests as stated in the foregoing paragraph 3. The court directs that all funds escrowed in connection with this dispute at Chase Bank (account number 000001609120785) and Key Bank (account number 440781003775) be released in full to the defendants according to their interests as stated in the foregoing paragraph 3.

6. The plaintiff's Amended Complaint and all claims therein are hereby dismissed with prejudice.

7. This Order and Final Judgment resolves all claims and is entered as the final judgment in this case.

DATED this 27th day of Nov, 2007.

BY THE COURT:

/s/ Douglas B. Thomas
Honorable Douglas B. Thomas
District Court Judge

APPROVED AS TO FORM:

Thomas A. Mitchell, Esq.
Attorney for Plaintiff

Ronald G. Russell, Esq. of
PARR WADDOUPS BROWN GEE & LOVELESS
Attorneys for Defendants

ADDENDUM B

IN THE SEVENTH JUDICIAL DISTRICT COURT
OF CARBON COUNTY, STATE OF UTAH

ORIGINAL

STATE OF UTAH,

Plaintiff,

vs.

MATHIS LAND INC Et al,

Defendant.

Case No. 050700196 PR

Hearing
Electronically Recorded on
August 30, 2007

BEFORE: THE HONORABLE DOUGLAS B. THOMAS
Seventh District Court Judge

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PROCEEDINGS

(Electronically recorded on August 30, 2007)

COURT CLERK: Seventh District Court in Carbon County, State of Utah is now in session. The Honorable Judge Douglas B. Thomas presiding. Please be seated.

THE COURT: Good morning, folks.

MR. MITCHELL: Good morning.

MR. RUSSELL: Good morning, your Honor.

THE COURT: We are here on the case of State of Utah vs. Mathis. We have the State being represented today by attorney Thomas Mitchell and Michelle McConkie; is that accurate?

MR. MITCHELL: Your Honor, Thomas Mitchell and this is Erin Arnold, who will --

THE COURT: Thank you, Ms. Arnold. We have Mathis being represented today by Counsel, I'll let you --

MR. RUSSELL: I'm Ron Russell, your Honor.

THE COURT: Thank you.

MR. RUSSELL: This is my -- Royce Covington from my firm.

THE COURT: All right, thank you. After I missed on the first set of names on the docket, I wanted to make sure that I didn't do it twice. So thank you all for being here today.

The time is set for oral argument on a motion for summary -- cross motions for a summary judgment that have been

filed in this matter. As I have reviewed the pleadings -- and I have tried to review everything that has been submitted. I will not pretend to Counsel that I know those documents, as well as I'm sure you do, there's a number of documents in those cases.

However, it struck me that there is a threshold issue that I think probably needs to first be addressed before we address the issues with respect to the After Acquired Title Statute, get into the applicability of the Jones Act and the effect of the Jones Act, and the amendments.

Before we get into any of that, I think the threshold issue has to do with the applicability of the statute of limitations set forth in Utah Code Annotated Section 78-12-2.

I would first like to hear argument on that issue from both sides. I have reviewed your arguments and your brief. I have read the cases that you're each relying on, but I want to give you an opportunity to more fully set forth your positions on that issue.

I think that issue needs to be addressed first, because that issue may be dispositive as to whether or not I even reach those other issues. So I would appreciate you arguing those issues first. I'll let the State go first.

MR. MITCHELL: Thank you, your Honor. If I may approach the bench?

THE COURT: You may. Thank you.

MR. MITCHELL: Counsel for the defendants have a copy

as well. Your Honor, on the statute of limitations question, if you would turn to tab 6 in the exhibits, It essentially sets forth for you the applicable statute of limitations today, and the applicable statute of limitations in VanWagoner; and as you can see, they are identical.

VanWagoner is directly on point as to these statutes and as to this plaintiff seeking quite title. "This plaintiff" being the school trust lands. The lands have been passed to the State under the Enabling Act, Act of Congress, and accepted pursuant to the terms of the Utah Constitution.

As in VanWagoner, this case is identical in that but for a Constitutional prohibition, there is no question that this statute of limitations would otherwise be applicable to bar the risk cause of action if it's a true tax title case.

We, of course, don't agree in the first instance that it's a true tax title case. We don't agree that it's a true tax title case because the tax sale, having been brought against property which was not subject to taxation, it's void, just as a tax sale of the State Capitol or a tax sale of this courthouse would be void, and no passage of time would divest this State or this County of it's courthouse by virtue of an erroneous or invalid or void sale.

But looking directly at the statute of limitations and looking directly at the VanWagoner case, the State in that case stated to the Court, the sole question is, may the Legislature, by statue of limitations, impose a bar or a barrier to the

recovery of land which was given in trust, given that the Utah Constitution Article 20 Section 1, provides that the State accepts and holds this land in trust.

If the State -- and the State, as part of this promise in its Constitution, the acceptance of this land, has said that it will not leave, it you will not allow that property of the trust to leave, except for the respective purposes for which they have been, or may be granted, donated, devised, or otherwise acquired and; therefore a void tax sale would -- and of course, any tax sale of State property would be void, because it's not subject to taxation.

That the Court held it is conceivable in the face of such a -- is it -- asks the question, is it conceivable in the face of such a Constitutional provision, that the Legislature could have intended its statute of limitations to apply such lands. It is our solemn duty to hold that such could not have been the Legislative intent.

Now, since 1921, the Legislation has never expressed a contrary opinion. It has simply passed on the same identical language, and has never in any way attempted to address this holding to try and reach a different result.

Defense, in this case, place a great deal of weight on the Trail Mountain case. The Trail Mountain Case, there are a couple of important observations in regard to that. In the first instance, the Ute -- the Utah Supreme Court did not overrule its holding in VanWagoner.

What it held was, that in the context of what was essentially a commercial dispute, i.e. a contract dispute, between the trust and the mine company paying the royalties, that in the absence of the Constitution issue having been raised in a timely fashion, it would not disturb the lower Court rule -- the Appellate Court ruling. It was too late to raise that issue.

If the desire to distinguish or desire to overrule its clear precedent, it could have done so. The Court does not overrule clear and unambiguous precedent on a Constitutional issue without comment, without any reference to the case it's overruling.

The Appellate Court or the intermediate Court of Appeals decision has no precedential value as against the Supreme Court's decision in VanWagoner. So I think Trail Canyon -- or Trail Mountain does not provide a basis for ignoring or for applying a different standard where the Supreme Court has spoken so clearly and unambiguously as to this particular statute of limitations, as to this particular type of plaintiff, in this situation of seeking to recover property, which is being adversely claimed under color of the tax title (inaudible), as opposed to purely adverse possession; but again, the elements being more or less the same.

Does the Court have any specific questions on this issue?

THE COURT: Well, I suppose you just touched on my

primary question, and that is the differences. I take a look at the case which you were referring to, the VanWagoner case. That's an adverse possession case; and the cases that are cited in VanWagoner are all adverse possession cases, where essentially there is no claim to the property through deed or through color of -- really no colorable right to the property, other than simply coming onto the property, fencing it off, raising crops, ditching it, that type of thing. There is no color of title.

My question has to do with isn't that factual situation different from the facts of this case where we have an original patent issued in 1912; we then have -- I won't go through the whole analysis, but of course, the Sweet decision, actions by the Department of Interior, the Jones Act, the Jones Act Amendment, and then the tax title being issued. That tax title, that tax deed, being in effect now for close to 70 years, isn't that different from the facts in the VanWagoner case?

MR. MITCHELL: Well, yeah, they are -- the facts are different in each case, but let me distinguish, if I can.

In this case, the relevant -- the relevant act is the tax sale. What goes on before goes to why it was State property; why it didn't belong to the Milners and their Carbon County land scheme; why acts had been taken by the United States Government; why there had been investigations by the auditor in the Governor's office to get to the bottom of this

-- of all this coal crop.

After that date, after the efforts of the United States, after the efforts of State auditors and investigators, the title being in the State, then the question arises, could a tax sale of property which is not subject to taxation, which, of course, the State receives no notice of, the State doesn't receive notice that its property being sold for back taxes?

Think, for example, if you think about it, if you look at the front -- I think it's tab No. 3 in your binder -- you look at the map of the State of Utah, and you look at the blue squares, they are somewhere in the neighborhood of 7,000 plus individual parcels of land held by the trust. There is not only no actual notice to the trust that someone is purporting to sell its property at a tax sale, there can't even be any constructive notice.

The Supreme Court in the -- in a recent case noted that you can't affect the State's property through constructive notice when the State has property everywhere, and the State holds property pursuant to law. The State doesn't go down when it acquires title in its sovereign capacity or in its trust capacity, and file -- or at least historically did not file.

In this case, of course, there actually is a 1964 on file in the County record of the State's title; but under those circumstances, the relevant time to look at this case is from the time there was a void tax sale, and the holding under that void tax sale.

In this case the State had no more notice of Mathis' claim than it did in the VanWagoner case. The fact that there was a quit claim deed out of the County in the 1930's for one parcel among thousands, does not provide either actual or constructive notice to the State.

If this was purely an equity case, as opposed to a statutory case, you might say, laches, because that's really the heart of what they're arguing. They're arguing to you an equitable argument. They're not arguing to you that the statute of limitations can't apply under VanWagoner, because VanWagoner is so express as to the fact that the Legislature is incapable in its legislative capacity of breaching its trust under the Constitution as to these lands.

Instead, what they're really arguing to you, and I think, you know, the appeal to their case is, the passage of time. The passage of time. The passage of time in this case, your Honor, is a passage of time in which the State had no notice of this adverse claim to it. There's no evidence that there was an adverse claim.

The activity that went on before is the activity of trying to disgorge property wrongfully transferred, and get it back into the State. The title to the Mathis' claim is from a quit claim in the 1930's, an independent root of title, which stands and falls on the validity of the tax sale.

We aren't saying that the tax sale was flawed. We're not saying that the tax sale failed to comply with some

technicality. We're saying it was void out an issue, as though it never happened, because there was never the power in the County to sell State property at a tax sale.

Because of that, in truth, setting aside for a moment the fact that this statute can't apply to the trust in the circumstance, it isn't even applicable, because there was no tax sale of the State property. It never happened. The documents were without any legal effect. The only a legal effect of the quit claim deed was to dispose of any claim the County had in the land, and to transfer that, whatever claim the County had, to the Mathis'. It did not operate to pass the title that they held.

So, consequently, in the first instance, this statute of limitations really isn't applicable. What their argument really is, is a laches claim. We've cited in our brief, in our open brief, and they have not contested that the passage of time, the failure to act of employees of the State, of the trust, of the sovereign, can act to divest the State, the sovereign, the trust of its properties. Laches will not run against the trust by virtue of the passage of time and the failure to act in the abstract of State officials.

Does that help clarify?

THE COURT: A little bit. I'm a little concerned about the notice issue that you've indicated. I recognize you essentially as stating that the State has 7,000 parcels of property that they need to look over; but I'm -- I suppose

I'm struggling to a certain extent with the fact that this particular parcel has been operated now, as I indicated, for close to 75 years; and the State is now claiming we had no idea that this property was being held under this tax sale, or under this claim of ownership until 2004. I mean, is that, in reality, what the State is arguing today?

MR. MITCHELL: The State is arguing that, as alleged in its complaint, it received -- it became aware of the Mathis' claim for the advent of the attempt by the Mathis' to lease the coal, and it brought its action thereafter.

There's no evidence before the Court, or argued, that the State had -- that the trust had any actual knowledge of the tax sale, or the status of what was in the County records, or who was physically on the land. Again, 7,000 acres, a handful of people.

You know, if you think back to the original concept of why you can't adversely possess the sovereign, the theory was that the king owns everything, and the king is out doing what the king does, defending the borders, administrating the law, providing for the public welfare; and that if the king turns his back on this property, and others occupy it, we don't want the king spending his time looking behind his back to see if somebody else is on his property. That he cannot -- the king -- in this case the sovereign -- in this case, even more to the point, the trust, which the Legislature has sworn to protect, that because you turn your back on one piece of property among

thousands, that the presence of another under a quit claim deed -- and there's no notice -- there's no evidence that the trust received any notice prior to this coal case, that it was being claimed adversely. That this was the same parcel of land which had been through the adjudication, which had been the subject of the State auditor and the Governor's reports, that a quit claim deed had issued sometime in the heart of the depression, and that thereafter the Mathis' had been using it for ranching purposes.

It wasn't until the coalies, which brought it to a higher level of attention, came about, that it was brought to the attention of trust. In truth, it was at that point that the real value of the trust was challenged. Yes, the trust had lost the grazing fees on the land during those period of time; but this was the first time something of real value of the trust was being overtly challenged with the mining of this coal.

So not only was there no actual laches in the sense of, "Oh, yeah, we know this is going on, and we just can't get around to it," but even if such was the case, "Oh, yeah, we know this is going on, but we've got -- we're just so busy we can't get around to it," laches would not act to divest the State of title. So, again, this is not a true tax sale case. This is a void sale.

Secondly, then, VanWagoner, I think, is expressly clear on what the values are that are weighed here; and how

constitutionally the Court judges what the Legislature intended. It doesn't go out of its way to find the statute unconstitutional. It can construe a statute constitutionally, it will do so; and it did so in this instance by finding that the Legislature did not intend this to apply to this plaintiff when seeking to recover its property.

So I really -- I believe this case can be decided, can be disposed of with the finding that if tax prop -- if State property, it wasn't subject to a tax sale. If subject to this express -- if this statute would otherwise apply on its face, it cannot be applied as to this plaintiff, as to this group of lands. We think that there's really no ambiguity that this statute is addressed by VanWagoner as to this -- as to this land and as to this claim.

Does that -- is that -- are there still --

THE COURT: One other question, if I might ask -- and I don't want to get into the whole argument yet with respect to the after acquired title, but just assuming for the sake of argument at this juncture, because I'm focusing again on your statement that the tax sale really was invalid ab initio; and you're essentially suggesting that that was never a valid sale.

If, just for the sake of argument right now, before we get into that, we were to assume that -- and I'm not making that assumption, okay? -- but if we were to assume that the After Acquired Title Statute applied in this case, then wouldn't the tax sale have been a valid sale?

MR. MITCHELL: Absolutely, if after acquired title, property never -- we never got it. It just is -- on 1927, this land lept into Carbon County. Carbon County held the land, free, clear. State had no interest. There was something for the County to tax. County taxed it. The sale was proper. There was nothing to challenge about the tax sale. Then it's a tax sale case; no question about it.

To find out whether such is the case or not, to find out the answer to that, you have to provide the trust the opportunity to address that issue. VanWagoner says, "We don't -- we won't let this statute be construed in such a way that the trust can't even get in the door, because the passage of time, where there's been a quit claim deed and a tax sale out of the County, the passage of time is sufficient to bar the trust, who the Legislature constitutionally is bound to protect, we will not construe or impute to the Legislature the intend to do so.

So I believe even if, of course, if you find the other, I -- you know, we have a big problem; but you can't even decide this case without having decided the after acquired title case as to whether the statute of limitations allows you to address that issue.

THE COURT: Okay, I think that answers my questions. Thank you.

MR. MITCHELL: Thank you.

THE COURT: Mr. Russell?

MR. RUSSELL: Thank you, your Honor. It's a pleasure to be out here. I -- whoops, excuse me. I've been in front of Judge Halliday many times; and it's nice to meet you this morning. I haven't had that pleasure before, but it's good to meet you. It's nice to see, as well, that you've taken obviously a lot of time to review the materials, and take a look at the case.

You know, the first thing that struck me about this case -- and perhaps it's why you're focusing on the statute of limitations first -- is just the inherent injustice of the facts that come forward. It's like we've got a piece of property that's been in the family for all these years, suddenly when there's an opportunity that's presented by a lease, where the family can now finally make some money off their land, the State swoops in and tries to take it all away.

So we initially looked at that question, and I think -- and certainly we submit that the statute of limitations is dispositive of the case; and the other issues are there, and I think can be dispositive as well, but you don't even really need to reach them because of the way the statue of limitations would operate.

I think the Court really hits the nail on the head when you say the VanWagoner case, wasn't it different because it was an adverse possession case? It is clearly different because of that. We're not claiming here that the Mathis family adversely possessed this property. That would be a

different case, and we recognize that there would be a constitutional issue with that if we were making it. So we've never made that claim.

The issue is a little different than that, there are two statute of limitations really at play here. The first -- one is the tax title statute of limitations, and as I understand what Mr. Mitchell just said, the State's not challenging the procedure utilized in the sale and so on. The reason you have a four year tax title statute of limitations is because of that. It's too late to come back and try to say that what the County did or didn't do in the sales process was defective, but -- and that statute ran four years after 1931. So that one's around; there's no question about that.

You still, then -- so you get back, then, to the other statute of limitations, which is 78-12-2, which is entitled, "Actions by the State." Says, "The State will not sue any person for and respect to any real property or the issues of profits thereof by reason of the right or title of the State, the same --" okay, now this is not an adverse possession statute -- "unless one such right or title shall accrue within seven years before any action or other proceeding for the same shall be commenced."

Now, the State asserts that it obtained title under the Taylor Act -- or the, excuse me, the Jones Act in 1927. Seven years was run a long time -- or after that. What's interesting is, is that the VanWagoner decision was directly

addressed by the Court in the subsequent Trail Mountain case.

I just wanted to read this quote, because it's -- in the Court of Appeals decision in Trail Mountain says that "A plain reading of the statute reveals --" and we're talking about the same statute -- "that it applies to actions brought by the State as a consequence of the State's claim of right to real property or issues of profits derived therefrom."

On appeal, the Utah Supreme Court -- well, it cited to the proposition, VanWagoner, the states are generally exempt from the applicable statute of limitations when acting in their capacity as a school, land trusties, but specifically refused to adopt that holding; and in fact found that for the seven year period in question, that the statute of limitations does apply. The Court didn't simply refuse to hear the arguments because they weren't brought up in time; but in fact, the merits were reached.

In the Pine -- Pioneer Investments and Trust, an old 1909 Supreme Court case that we've cited as well, the Court held that, quote, "This section --" the one we're talking about -- "in substance provides that the State is barred from bringing an action for the recovery of real property claimed by it, unless such action is commenced with seven year -- within seven years."

Now, in this case, we're not dealing with the situation you had in VanWagoner where you had one party that had received a conveyance from the State, another party that was claiming by

adverse possession, challenging the conveyance that had been made by the State to someone else.

This is a situation where the predecessor in interest -- the predecessor in title, the Carbon County Land Company, received a patent. They received the patent in 1912. We'll get into that -- that whole sequence a little bit more, but certainly in 1927, by operation of the Doctrine of After Acquired Title, title vests.

At that point in time, is when a cause of action by the State arose. If -- it wanted to say that after acquired title doesn't work here. If after acquired title is not going to be utilized -- and we're not going to recognize that; and yes, in fact, the State claims that it owns these sections that were conveyed by patent, without mineral or reservation, prior to 1919, is the relevant date, and we'll -- again, we can get into that -- it should have and could have brought a quiet title action then, and it chose not to.

It's simply stated, our -- simply stated, our position is that it's too late now for the Court -- or for the State of Utah, the Trust Lands Division, to go back now and say, "Oh, well, we're now going to challenge our own conveyance of this property." The statute plainly states that the State cannot do that. It states that the time period has run.

Again, I think simply stated, our position is this is not an adverse possession case. This is a case brought by the State challenging its own conveyance of real property that

occurred a long, long time ago. That conveyance or property to Carbon County Land Company ultimately resulted in a tax sale of that very land; but it is the conveyance itself that the State made that it is not in a position at this time to challenge because of the operation of the statute of limitations.

So the VanWagoner case I think is easily distinguished because it's an adverse possession case; and the Trail Mountain Coal Company vs. Utah Divisions of Lands and Forestry case makes it clear that the statutes that the Legislature says apply to the State, do apply to the State.

Just quickly, the other provision, 78-12-33, is sort of the catch all at the end of the limitations sections. If there's any question again about whether it was intended by the Legislature that the State be precluded from challenging its own conveyance -- not an adverse possession claim, but by challenging its own conveyance, says, "Limitations in this article apply to actions brought in the name of, or for the benefit of the State or other governmental entity, the same as to actions by private parties," except under one section, which are asbestos claims, who have no bearing on the case before this Court.

So that's, simply stated, our position. I think when you cut down to the chase, that's what you get back to, is can the State, at this point in time, challenge the conveyance that it made back in 1912; and that the statute of limitations has run on that.

THE COURT: Thank you.

MR. MITCHELL: May I briefly respond?

THE COURT: Certainly.

MR. MITCHELL: Your Honor, the defendants have muddied a couple of very important points. First in point they've muddied is, they talked about the State as though the State is monolithic. There's no question the statute of limitations applies to the State. The question is, does the statute of limitations apply for this particular plaintiff, the trust.

The Supreme Court held in VanWagoner at page 679, "The Constitution declares that such lands shall be held in trust -- " the trust lands -- "shall be held in trust for the people to be disposed of as may be provided by law for their respective purposes for which they have been or may be granted," quote, end quote.

We emphasize the language just quoted and stated that it was an, quote, "absolute limitation upon the power of the State to dispose of such lands, or permit them to be disposed of except for the purposes for which they were granted by Congress." We reaffirm what was there stated; but we find no reason to change our opinion.

Then down at the next paragraph, "With this explanation there ought not longer to be any doubt as to the grounds." Now, nowhere in this opinion does the Court say this is a adverse possession case, and our reasoning, our logic, our moral prohibition is limited to adverse possession cases.

Also, remember, of course, as of the time this case was decided, tax titles were still very frail things. They were constantly being assaulted for formality issues. Remember, the purpose of this statute was to stop the attack upon the procedural problems, which invariably arose in tax titles. It is limited to a specific class of problems; tax titles, and the procedures by which they were gained.

The Court goes on, "Believing as we did, that by the enabling act, the State was morally bound because of the, quote, "Sacred obligation imposed upon its public faith," end quote, and believing also that by the provisions of the State Constitution was not only morally, but legally, bound to see that these lands or the proceeds there were devoted to school purposes, the Court was of the opinion the statute of limitations had no applications to the case.

There's nothing about adverse possession that's relevant to that logic. It's -- the fact that -- and that case was adverse possession adds nothing to the proposition about what the ability, what the capacity of the Court's -- of the Legislature is when dealing with this class of lands.

Finally, the language quoted from the Supreme Court's Trail Mountain decision, where he says, "We disagree, a plain reading of the statute," if you look in the paragraph above, what is it they disagree with? They disagree with, quote, "Specifically Trail Mountain asserts that the language," quote, "by reason of the right or title of the State to the same," end

quote, in 78-12-2, "limits the applicability of the statute to cases where the State sues for the right or title to real property, it's an adverse possession suit."

We disagree. It's disagreeing with Trail Mountain's argument where the Court of Appeal's about the six-year statute of limitation. That's what it's disagreeing about. It's saying, "f you apply this, it's the six year, not the four year." That's what that dispute is.

It does not in any place -- so it does not reach the merits of, is this a VanWagoner case? It says, "We're not going to address that," specifically. It does not overrule VanWagoner. VanWagoner is still the controlling precedent before this Court. The underlying purposes of VanWagoner are still as applicable today as they were when they were first written.

THE COURT: Well, let's focus on that for just a moment; and let me throw out a hypothetical to you, and perhaps -- I'm not trying to suggest that is this case, but I'm trying to extend the logic of what you've just suggested to me that VanWagoner stands for.

Let's presume that the VanWagoner case has indicated that the State can always go back to recover property. It can always do that; and that's what it stand for the premise for. What if we had a situation as -- similar to what the defendants in this case are alleging, but let's assume that we had a situation where the State had deeded property, and let's

presume that we don't have the Sweet decision, and we don't have all the fallout from that, but the State just deeds the property out. Shouldn't have done it under the terms of the Federal grant, but they do it.

State just deeds the property out, and somebody buys the property, they use the property, they have the property. Are you suggesting that the VanWagoner case stands for the proposition that it doesn't matter that they would have done that. What matters is the fact that it's school trust lands; and therefore the State, at any time, can go back and retrieve that property?

MR. MITCHELL: No, I'm not arguing that, your Honor.

THE COURT: Okay, and I realize that was a considerable extension of your argument --

MR. MITCHELL: Right --

THE COURT: -- but I want to --

MR. MITCHELL: -- but that is the box the defendants are trying to put themselves in; and they're doing that by saying, "Well, there was this deed in the form of a patent," and that the Mathis' are entitled to the benefit of that patent.

Well, one, without getting into the quit claim aspect of it, that's not true; and even more to the point, they have a separate chain of title. There is no bonafide purchaser, as is implicit in your example. There is no bonafide purchaser for value who intervenes in this case. This is a case where, if

you will, the Mathis' are a straydee, a stranger, a title that comes out of nowhere.

THE COURT: Well, is that accurate? I mean, don't they get their -- and doesn't this go back to what we discussed earlier? Don't they get their rights flowing from the original 1912 conveyance to the CCLC? In other words, the CCLC, we have this conveyance coming in from -- or through the patent; and isn't it the CCLC, then, that fails to pay their taxes under that, and --

MR. MITCHELL: Only if, by operation of after acquired title, that CCLC held the property; but even then, even then, their title is a new and independent title. Tax title is not derivative of; it is a new and independent title whose basis begins with the tax sale.

THE COURT: I suppose, my question, the reason why I'm focusing on that 1912 due deed isn't necessarily to adjudge whether or not there was after acquired title, but to focus a little bit on the notice that would have been out there to the State.

You've suggested today that the State would have no notice that there was being any claim to this property; and yet they have their own grant back in 1912. Then there's also, of course, the tax deed that occurred at the later date. That's what I'm struggling with, is this suggestion that the State has no notice, in light of the fact that we have these two deeds out there.

MR. MITCHELL: Well, you have the original patent; and it was that patent which was the notice tot he Federal Government to bring CCLC into Court, into the Administrative Court, and to adjudicate whether at the time the State purported to sell it -- or even more to the point, at the time the State would have acquired title, the property was known mineral in nature.

The party who received the patent from the State of Utah, was present, had the opportunity to be heard, present evidence, make argument, call witnesses, and contest this underlying fact as to the validity of the patent, because the validity of the patent is dependent upon whether or not the State of Utah received that (inaudible) under the enabling act.

So as to the party who received the patent, they receive a title dependent upon whether or not the State of Utah had title to pass, and they were able to litigate that. They received a final appealable judgment. That judgment was not appealed; it became final.

As of that point in time, both the State and Carbon County Land Company knew that title rested in the Federal government. Thereafter, the Jones Act, which was highly publicized, occurred. Did Carbon County make any noise, take any action, to say, "We're paying taxes because it's ours under after acquired title"? Is there a letter in the file saying, "As to this particular patent, after acquired

title should pass to us from Carbon County Land Company"? None.

Carbon County Land Company knew that their title had ceased. They ceased to pay taxes on a land in which they no longer had an interest. The County, understandably, with all the land they have, and particularly during the depression, all the lands under back taxes roll, simply dealt with it as, the paper goes out, the taxes come in or they don't come in. If they don't come in, we have a tax sale. It's subject to redemption. Did anybody redeem? Nobody redeemed. It's available for the County to sell.

Do they ask themselves, could this have been Jones Act land?" Of course they don't, understandably so. When we think about who had notice, we know that prior to the leases having been issued for the coal that's in dispute here, and the land that's in dispute here, that in 1964, pursuant to congressional action, to try and deal with the fact that you have all this land, which has been the subject of all these State and Federal actions, which are dispositive as to their status, there's nonetheless, nothing filed in the counties where the lands reside.

As a result of that, the United States started to issue its own patents. Finally, in 1964 -- and this is really, if you think back on it, part of that whole (inaudible) period of trying to clean up the records on the public lands -- it finally issues the patent to the State of Utah for this land.

What does that patent say? It says, "This land comes

to the State of Utah pursuant to the Act of January 1927," the Jones Act. It is recorded. As soon as the State receives it, it records it. It recorded thousands of these. Sent them out in bulk. We do know who did have actual notice of the adverse claim from 1964 on; and that was the Mathis'.

They did not come to this State and say, "What is this patent under the Jones Act? What is this claim of title under the Jones Act you're filing from the United States Government?" So the State of Utah was not taking any action to lie in the bushes and wait to see if some coal opportunity showed up. The State of Utah, as soon as it did become aware that there was a conflict, took action.

There really is not an equitable basis. This is not a case where estoppel -- there was a representation by the State to the Mathis' that the Mathis' relied on, because it was made to them and asked them to do something in reliance thereon. It's just the opposite.

As of 1964, a statement was made on the public records as this land of the State of Utah did claim it, and claimed it under the 1927 Act. So it's a very different case than the sort of case that might otherwise trouble you, I think.

THE COURT: Okay, thank you. There were a few items that were new that were raised, Mr. Russell. I'll let you do that, and then give Mr. Mitchell a final reply.

MR. RUSSELL: A couple of items were raised, your Honor, that sort of touched on the rest of the case, but I

think are important to understand, because it does bear on the statue of limitations. So if I might approach the bench?

THE COURT: You may.

MR. RUSSELL: I also created a handout. Some of these are a little bit duplicative of -- I think of what Mr. Mitchell gave you, but a couple letters here that are not. Let me start where he finished.

The patent that was issued in 1964 was a confirmatory patent, which is done routinely. It relates back. It's irrelevant, quite frankly. It's not an indication of the State claiming present ownership, it's a United States finally getting around to formally granting to the State the Lands that were passed either under the Enabling Act or under the Jones Act.

Let me refer the Court, in this packet that I've just handed to you, you'll see a couple of letters. The first one is under Tab 3, which is a letter that's -- that written in 1929 -- see, these are letters that are contemporaneous; and this is why the Statute of Limitations really has to apply here. This is not, again, a situation where we've got adverse possession being claimed based on a period of time; but we have a conveyance that's been made that has a legal effect that the Court -- that the State chose not to challenge at the time.

We've heard argument about notice, I'm not quite sure that that's relevant, but this is not a Bonfield purchaser case; this is not a -- those issues really have nothing to do

with it. I think the issues are before the Court.

If you'll look at this letter, this is written by the State Land Board of Utah, which is the predecessor to the present day SITLA, the State Institutional and Trust Lands --

THE COURT: And this is under tab 4; did you say?

MR. RUSSELL: Tab No. 4, yes.

THE COURT: Thank you.

MR. RUSSELL: And I'm also puzzled by the notion that the State of Utah is not a party here, because that's what the complaint says. It's the State of Utah acting by and through the State Trust Lands Divisions. So it's a division of the State of Utah. I believe that the statutes are clear that all of the limitations apply against the State of Utah and its agencies.

Back to this letter, after the Jones Act was passed, the State Land Board -- the State Land Board of Utah is now realizing that, well, wait a minute. The Jones Act says that, title to those sections that were of known mineral character, now vest in the State. What does that do with sections like this one, where there was a conveyance made without a reservation of minerals?

Because if you look at the Jones Act, it says that after -- with respect to those sections that go to the State under the Jones Act of known mineral character, the State has to -- it can't convey the minerals. It has to lease the minerals. The Federal Government in its paternalistic wisdom

was trying to prevent the states from conveying away state trust lands, for the benefit of the school children.

So, anyway, back to this letter, this -- the State Land Board points out to the Commissioner in the General Land Office -- if you're just above the quoted language, it says, "In 1919, our State Legislature, Chapter 107, Session laws of Utah, enacted a law requiring that all sales of State lands thereafter must contain a reservation of minerals by the State, providing for the lease of minerals. However, any sales made by the State prior to 1919 were not subject to a mineral reservation in the State.'

Then he goes on to quote the afer acquired title statutes. Says, "After acquired title inures to prior grantees, if any person shall hereafter convey any real estate by conveyance, purporting to convey the same, a fee simple and absolute, and shall not at the time of such conveyance have legal estate and (inaudible) estate, but shall thereafter acquire the same. The legal estate subsequently acquired passes."

So then he sets up the fact on the next page that the statute represents a legislative declaration of the Doctrine of Estoppel by D. In the next paragraph under the decision, this has been called to our attention. "This doctrine appears to be binding upon States and their transactions, as well as upon individuals. The result of the application of the doctrine, wouldn't ordinarily --" "would ordinarily, therefore, result in

the vesting in the States, prior grantee, any title, which the State of Utah acquired under the Act of January 25th, 1927, the Jones Act.'

So then he asked the question, "Okay, well, what do we do now, because the Jones Act says we can't convey minerals. We've already issued these patents that do convey the minerals, but the Jones Act -- how do we resolve this quandary?" That's what ended up being resolved in the 1932 amendment, which we'll talk about.

My point there is, the State knew in 1927 that after acquired title had occurred, that that created an issue with the minerals, and the mineral estate. If you look at the next letter in the sequence, which I've got under Tab 5, this again, this is a letter from the State geologist for the State Land Office; and these records are right out of the SITLA's files, A -- E. H. Burto, who's writing now to the State Land Board, and they're asking him for his advise, "What do we do about these properties that are in this category?"

The conveyances prior to 1919, without a reservation of the mineral estate, that involves State's school trust lands, how are we going to deal with this, because we've got after acquired title in the State of Utah?

If you just -- I don't want to read this whole letter to the Court, but he recites all of the history. Then he gives two recommendations. If you go ahead to page 4 of the letter, after describing again what we've just gone through, it says,

"Under --" after describing after acquired title and the history and how we got to where we are with conveyances prior to 1919, he says, "I believe two courses of action are open to correct the situation." Do you see that?

THE COURT: Yes.

MR. RUSSELL: No. 1, "To endeavor a higher an act --" or "to have an act passed by Congress quieting title in the various states to all school mineral lands sold prior to the Act of January 25, 1927." That would be like this one. That's what they did; they ended up getting Congress to pass an Act.

Then he talks about -- he doesn't think that's possible. Congress probably won't do that, but in No. 2, then, he says, "For the State of Utah proceed with the classification of all school, section tracks as to mineral characteristic which was sold without mineral reservation to the State." Then he discusses the fact that you have to essentially bring quiet title actions on all of these sections.

So, the State of Utah knew about this. This -- the trust land -- or the State Land Board knew about this issue back at -- contemporaneous with the passage of the Jones Act, with the amendment that was done by Congress in 1932 to address this issue.

The whole point of our argument about the Statute of Limitations is not that we've adversely possessed this property since that point in time, which is, you can't get title by adverse possession, but the State conveyed this parcel. There

was a conveyance by patent that subsequently resulted in that party losing its interest by a tax sale, that then results in our chain of title, no question about that; but it is simply too late, the time period has passed for the State to be bringing the actions, challenging its own conveyance of lands that occurred back in 1912 as then operation of an after acquired title in 1927 by the Jones Act.

So this is not some -- a case where after acquired title applies. I think the Court -- the example the Court gave hits the nail on the head, that if the statute were to be interpreted, the limitations period, as the State is now arguing, any conveyance made by the State of Utah of a trust land, would be subject to a challenge at any time, without limitation, because somebody in a different administration, 10, or 15 or 20 or 100 years later, could look back and say, "You know, there was fraud in that transaction," or "We don't think that the purpose it was conveyed for was proper. It was used for something other than benefitting the school children." "The person got a better deal than he or she should have."

That's why we have a limitations period. You need to have certainty in title so that people can get on with life, that they can understand the property has been conveyed, they can make valid use of the property; and there's a seven year period for the State that if it wanted to challenge some conveyance, it could have, and it didn't do it. That's our --

THE COURT: Thank you.

MR. MITCHELL: -- rebuttal for that.

THE COURT: Just for your information, Mr. Mitchell, I'm taking that argument against focusing primarily on the notice issue that would have been to the State. In other words, I'm not trying to get into ruling on the applicability of the Jones Act and after acquired title; but I'm focusing primarily on that rebuttal as notice to the State.

MR. MITCHELL: I understand that, your Honor.

THE COURT: Okay.

MR. MITCHELL: That's why his characterization of that, I think, is misleading at best, and here's why. The letter of July 17th, 1929 by Mr. Oldroyd is not a position by the State of Utah. What it says is, "Under the doctrines which have been called to our attention --" Mr. Oldroyd, not appearing to be a lawyer, not saying -- which would have been helpful if he really thought it was the case -- that this is the opinion of our Attorney General, or the attached briefs, or the attached legal analysis. Rather, clearly someone got to him and said, "Send this letter," and he said, "You -- you're the solicitor, you're the chief legal officer of the land for these issues. What do you think? We've been told we have a quandary here."

Of course, we know what he said to that. He said, "Nonsense;" but even more to the point, the real purpose in the letter comes down to the issue -- and here's the important distinction to keep in mind. There's no question after the Jones Act there were a class of lands whose status was unknown,

who's title was uncertain. These lands were not among those lands. The lands -- the land in this case.

THE COURT: Because of the Department of Interior --

MR. MITCHELL: It had been adjudicated.

THE COURT: Because of the Department of Interior, is what you're suggesting?

MR. MITCHELL: Because of the Department of Interior. No quiet title action was necessary. Title had been quieted in the United States. It was the United States to dispose of, as of that point in time. Everyone who had an interest in that land, everyone who had received a patent had been involved. It was litigated, it was adjudicated, it was final, it was res judicata.

The issue in this case is, what happened afterwards? What happened when the Mathis' got a quit claim deed? Was there a tax sale or wasn't there a tax sale? Did the quit claim pass anything, or didn't it pass anything? Not whether there's some irregularity. It's was there anything for the County to sell?

The verdict letter, when read in full context, I think, does a good job of clarifying which lands are at issue. Of course, there would have been no reason this case as to these lands to have brought a quiet title action, because the quiet title action had already been done. Anything else?

THE COURT: I don't think so.

MR. MITCHELL: Thank you.

THE COURT: I tried to listen very carefully to the arguments that have been presented today; and I suspect that these are issues that are ultimately going to need to be sorted out through the Appellate Court, but I'm going to give you my best shot at it today.

I see a significant difference in the VanWagoner case and the case before the Court. That difference has to do with the nature of the proceeding. The VanWagoner case was an adverse title case, where the parties had -- I say "the parties" -- where essentially the Whitmore in that case would had gone onto the property, and under no claim of title, no claim of any right whatsoever, had essentially adversely possessed it. There was no color of any right to be on the property. There was no deed of any type in that case, whereby the party, the Whitmore party would have gone onto the property and held the land.

In the present case, we have, I think it's fair to say, a fairly complex series of events that transpired; and we have, in 1912, the patent that issued to the CCLC. That was a patent that was issued by, I believe, the Governor of the State of Utah, my recollection; am I accurate on that?

MR. RUSSELL: Yes.

MR. MITCHELL: Yes.

THE COURT: And that, in fact, that document is certainly a claim of right to the property. I acknowledge that we later have other events that are occurring. We have

the Sweet decision that occurs in 1918. We have the Utah Legislature's enactment of the statute in 1919. We have the Department of the Interior actions that occur. We have the Jones Act, and we have the Jones Act amendments. Then we have a tax deed, tax sale that occurs where the County essentially takes the property and sells it.

Then we have the parties who purchased the property at the tax sale. Under the color of that deed, staying on the property, using it, as acknowledged now by the State for grazing and ranching purposes for a period of 65 plus years, and the State has acknowledged today that we may have lost some grazing fees, we may have lost some grazing revenue, but essentially there has been continual occupancy on that property under the color of that deed.

So I take a look at the statute of limitations, and I think this case is substantially different than that adverse possession claim, given the history of the titles in this case, given the history of what has occurred.

We have the defendants in this case who've occupied that property under the color of title and under the tax deed, which flow from the 1912 patent. I recognize there's lots of disputes regarding that; but my point is, is that they are certainly on that property with a colorable interest, with color of title. I don't know if that's the appropriate language to use; but I'm simply suggesting there's a deed there that they're basing it upon. I see that as being a very

significant difference, and they're occupying it for a long period of time.

So as a consequence I then take a look at the statute; and it appears to me that the language is fairly clear as it applies to the State. Section 78-12-2, "The State will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the State to the same, unless one, such right or title shall have accrued within seven years before any action or other proceeding for the same shall be commenced or to the State or those from whom a claim shall have received the rents and profits of such real property or some part thereof within seven years."

I don't seen how those criteria have been satisfied in this case. I am mindful of the Court of Appeals decision and the Supreme Court's decision upholding this portion of the Court of Appeals judgment. I'm also mindful of footnote 11 in the Court -- Supreme Court's decision that indicates it wasn't fully briefed; and I recognize the State's claim with respect to that.

I believe when I take a look at the language in the Court of Appeals decision, where they state as follows, "It is true that States are generally exempt from the applicable statute of limitations when acting in their capacity of School Land Trust State." So they throw that out; but then they come along and, even though they quoted the VanWagoner decision, they stayed. "However, and exception to the general rule is

triggered when the State itself, through its Legislature makes the statute of limitation applicable to the State."

The Utah Legislature has specifically included the State of Utah within the applicable statute of limitation. Then the case goes on to quote those two provisions that I just read. The Court of Appeals goes on to state, "As if this section did not sufficiently indicate the Legislature's intent to include the State within the statute of limitations."

Another section provides that, "The limitations in this article apply to actions brought in the name of, or for the benefit of the State or other Governmental entity, the same as to actions by private parties." That's, of course, the statute that Mr. Russell referred me to a few moments ago.

Then, the Court of Appeals concludes, "Given the statutory scheme, we can only conclude that the Legislature intended to subject the State to the applicable statute of limitations." I think that is language that I believe is most appropriate to this case, given the history and the facts of -- as to what has occurred, given the fact that there was the colorable claim of right through the tax deed, and perhaps even flowing back to the 1912 deed or patent -- I keep referring to it as a deed, but it's the patent that I'm referring to, and I think everyone understands that.

I further believe that the 65 year -- 65 plus years of occupancy under the title of that deed, and the State's acknowledgment, that the State would have been entitled to

the rents from grazing or something from the grazing rights associated with that further cuts against the State, because the State is essentially suggesting today that we have lost out for a period of 65 years on these grazing rights that would have been associated with the land; and if they would have lost out on that, if they have lost those rights, then we're simply talking about a question of magnitude in this case. Whether or not we're talking about grazing rights or mineral rights, the legal principle should be the same.

So based upon all of those facts, it's my best shot today that the statute of limitations does apply as a bar to the State's action to recover the property from the defendants in this case; and accordingly, I'm going to deny the State's motion for summary judgment.

I suppose I'm granting the defendant's motion for summary judgement, only to the extent that it applies to the State's claim. In other words, I'm not suggesting that there's quiet title as opposed to the whole world, because the whole world doesn't have notice in this case; but as to the State's claim, in this case.

I think that's probably the best way to frame that to allow you to get before the appropriate -- this is an issue that probably needs to be addressed and solved by the appellate Courts, and I acknowledge that.

MR. MITCHELL: Thank you, your Honor. We appreciate it. We know you worked hard on this. We appreciate your

effort.

THE COURT: Thank you.

MR. MITCHELL: So in granting their motion for summary judgment, disposing of the matter, as a practical matter for today, can that be issued as a final order so that can bring an appeal --

THE COURT: Yes.

MR. MITCHELL: -- even though other issues remain?

THE COURT: Well, let's talk about what those other issues would be. What is it that I'm not --

MR. RUSSELL: I think that that disposes of all of the claims in the case. There is a fund of money that has accrued that the parties have placed in an escrow pending the resolution of this outcome. By ruling in favor of the Defendants, obviously that fund of money's available, unless something else is either agreed upon, or -- I don't know -- if an appropriate motion is made that that money not be released. That's not before the Court today, but we -- I will prepare an order, hopefully, and have Mr. --

THE COURT: I was going to request that you do that, Mr. Russell, please, and feel free to enhance the language. I've tried to express it as best I could today, but you're certainly not --

MR. RUSSELL: Right, I --

THE COURT: -- bound by my cumbersome words today. Let me phrase it that way.

MR. RUSSELL: The effect of the Court's order is to dispose of the case --

THE COURT: Yeah.

MR. RUSSELL: -- and I'll prepare an order that accomplishes that. It should be a final order so that this appealable --

THE COURT: And that's -- I had intended it to be just that. I just was uncertain as to what issues I was not disposing of in the case.

MR. MITCHELL: Well, I agree in part with Mr. Russell. I believe it's a final order for the purposes of appeal. As a practical matter, it is incumbent upon us to seek further order with regard to the funds in escrow. That is correct; but the order should reflect that not having -- the appealing that this matter was dispositive, should reflect that all -- that no other issues were addressed in the process --

THE COURT: That's correct.

MR. MITCHELL: -- and that this was in the --

THE COURT: In other words -- and here's something that I think is very important. You have raised in your briefs a variety of issues that I did not reach. I'm not trying to suggest today, that I believe the Court of Appeals couldn't reach those; and I don't believe anyone would think that the Court of Appeals or the Supreme Court -- which ever appellate body were to handle this case on an appeal -- would not be able to consider all of your arguments that are contained in the

brief. I think both of you would acknowledge those issues have been properly presented before this Court, and have been raised in the proceedings below, so to speak.

MR. MITCHELL: Okay.

THE COURT: So if that's your question --

MR. MITCHELL: Well --

THE COURT: -- Mr. Mitchell, then I think you've preserved those issues --

MR. MITCHELL: Yes.

THE COURT: -- to argue them on appeal, if that's what you're suggesting.

MR. MITCHELL: I simply want the record clear that whether the Appellate Court determines that they can decide, as a matter of law, those matters, that they rule in our favor on the other; or whether they return it to this Court for further proceedings, that those issues were not disposed of by you today. You do not need to reach them to reach this -- you do not reach them reaching this --

THE COURT: Correct, correct. In other words, I relied on the statute of limitations as the basis.

MR. MITCHELL: Right.

THE COURT: There's no question about that; and that's the basis that I'm relying upon for my decision today. I'm not getting to those other issues, you're accurate.

MR. MITCHELL: Thank you, your Honor.

THE COURT: For reasons of, I suppose, judicial

restraint, I don't see any reason why I need to reach those issue and make comment on them, when I'm using the statute of limitations as the basis for my ruling today.

MR. MITCHELL: I understand that.

MR. RUSSELL: And I understand that, and I will make the order reflect that the Court's decision is based on the statute of limitations --

THE COURT: Correct.

MR. RUSSELL: -- and the Court did not, as a result, reach those other issues --

THE COURT: Correct, that's accurate. That's accurate.

MR. RUSSELL: -- that were raised; and that doesn't preclude either party from raising an appeal that the Court should have --

THE COURT: Right.

MR. RUSSELL: -- granted the motion on the other grounds.

THE COURT: Correct.

MR. RUSSELL: Certainly, or should not have, on the other grounds, as the case may be.

THE COURT: Correct. Exactly. All right.

MR. RUSSELL: Thank you, your Honor.

MR. MITCHELL: Thank you, your Honor.

THE COURT: Thank you. Well argued, well presented case. I appreciate the efforts of Counsel in putting this together. It's been very, very helpful as I've gone through.

I know that you've worked very, very hard in putting this case together, and I appreciate your efforts. Thank you all for being here today.

MR. RUSSELL: Thank you, your Honor.

MR. MITCHELL: Thank you, your Honor.

THE CLERK: All rise.

(Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 26th day of September 2007.

My commission expires:
February 24, 2008

Beverly Lowe
NOTARY PUBLIC
Residing in Utah County